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ABSTRACT

Findings of a project to review Alaska statutes for evidence of sex discrimination is divided into 14 sections. An introduction provides an overview of the project scope, history, organization, and research procedure. A section on insurance looks at gender-based insurance rates and conversion and continuation of health benefits. Under the category of dissolution/divorce, the following types of statutes are examined: separate residences, name changes, interim spousal support and attorney's fees during divorce, grounds for divorce, child custody, and dissolution proceedings. Under the category of parent-child relationship, the study looks at statutes on parent responsibility, failure of custodial parent to permit visitations with child, out-of-wedlock children, and housing discrimination on the basis of parenthood. A section on pregnancy and related issues considers pregnancy leave for state employees, registration of fetal deaths, abortion, and prenatal blood tests. Statutes related to sexual assault and prostitution are treated in separate sections, as are inheritance and probate, partnerships, and public employee retirement benefits. A section on employment statutes considers wage discrimination and employment of the handicapped. A section on veteran's benefits examines civil service employment, veteran's preference statutes, loans, and related benefits. Additional sections look at the "head of family" designation and needy persons. (LP)

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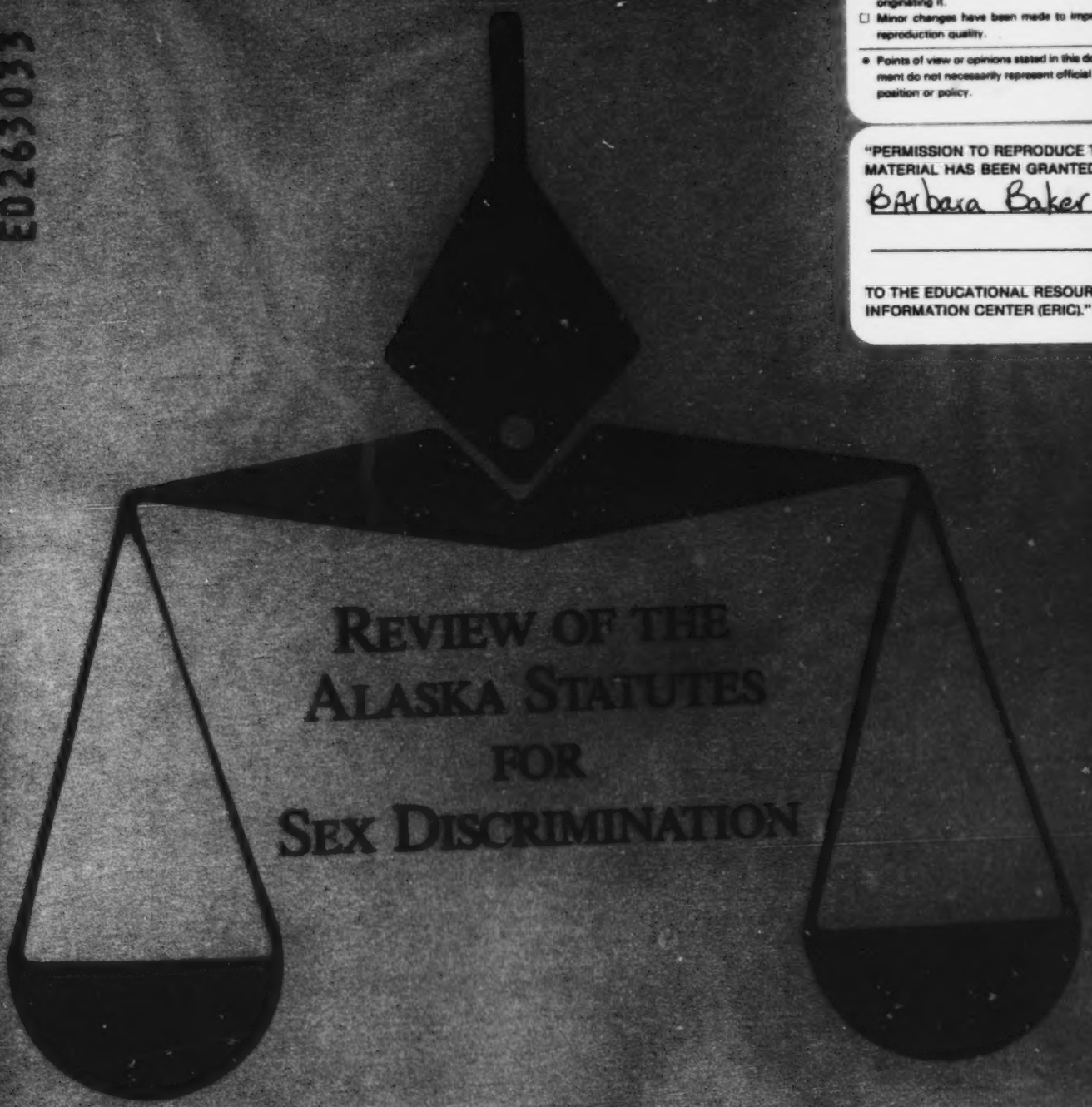

REVIEW OF THE ALASKA STATUTES FOR SEX DISCRIMINATION

J9 016 798

ALASKA WOMEN'S COMMISSION

May 1985

REVIEW OF THE ALASKA STATUTES FOR SEX DISCRIMINATION

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Published May 1985

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Review of Alaska's statutes for sex discrimination was accomplished through the combined efforts of the Alaska Women's Commission, the Alaska Bar Association, its members who volunteered, and many state employees who also volunteered their services. The Alaska Bar Association brought together attorneys with knowledge and experience in various fields of law to review Alaska's statutes for potential sex discrimination. Their efforts together with state administrators who also reviewed the statutes were essential components to ensuring that the review maintained a standard of excellence. The Alaska Women's Commission wishes to thank all of these volunteers for their conscientious effort and personal commitment to this project.

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INTRODUCTION

A. Project Scope

In 1972, Article I, Section 3 of the Alaska Constitution was amended to include an equal rights provision. This provision states:

> No person is to be denied the enjoyment of any civil or political right because of ... sex ... .

This report is the culmination of the first comprehensive review of Alaska statutes to identify those statutory provisions which run counter to the principle of equal rights. The report presents, in an arrangement by subject matter, all statutes in which a possibility of sex discrimination has been identified. The report is by no means limited to identifying only those statutes which clearly violate the state constitutional equal rights provision. The constitutionality of the various statutes presented in this report is not the critical concern; the goal is to identify all potential sex discrimination in the present statutes, regardless of how a court would rule the constitutionality of a particular provision.[1]

The sexually discriminatory statutes identified in this report fall into two general categories. The first is one where the statute, on its face, applies differently to persons depending on their sex. An example is AS 47.25.230, which provides:

> Every needy person shall be supported while living, and upon dying, shall be given a decent burial by the spouse, children, father, mother, grandfather, grandmother, grandchildren, brothers or sisters of the needy person, if they, or any of them, have the ability to do so, in the order named.

The problem with this statute is in the last clause -- "in the order named." The statute makes the father of a needy person liable for support and burial expenses before the mother, and the grandfather prior to the grandmother, and the brothers before the sisters.

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[1]This report does not identify those statutes which use gender-indicative personal pronouns. The numerous statutes that use these pronouns are being remedied by the Revisor of Statutes pursuant to AS 01.05.031(c).

This sex discrimination would be eliminated if the phrase "father, mother, grandfather, grandmother, grandchildren, brothers or sisters" were replaced with "parents, grandparents, grandchildren or siblings ... ."

The second type of statute identified in this report has no apparent discriminatory language. Rather, the problem is that the application of the statute produces a sexually discriminatory impact. This type of discrimination is far more common than the first type in our statutes. An example is the statute criminalizing prostitution.[2] Under present law, prostitution is a crime -- that is, a prostitute's act of accepting money for a sexual act is a crime. However, the patron's act of paying the prostitute money for the same act is not illegal. The statute is sex-neutral on its face -- it makes no difference whether the prostitute, or the patron, is male or female. However, the sexually discriminatory impact of the statute is nonetheless present. The effect is to criminalize what is more commonly the woman's act of prostitution, while not criminalizing what is more commonly the man's act of patronizing the prostitute. This inequity can be rectified by either decriminalizing prostitution or imposing commensurate criminal penalties on the act of patronizing a prostitute.

B. History

Following the passage of the equal rights provision in 1972, Representative Genie Chance requested that Alaska Statutes be reviewed primarily for gender based discriminatory language. Findings of discriminatory language were revised in House Bill 123 which was introduced in 1973 by Representatives Mildred Banfield, Helen Beirne, Genie Chance, and Helen Fischer. The proposed legislation was later amended into the Revisor of Statutes omnibus bill and became law in 1974.

Although ensuing legislative sessions began to address substantive areas of Alaska's law that were sex discriminatory (i.e., rape) no attempt was made to perform a comprehensive review to determine disparate impact of all the statutes.

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[2] AS 11.66.100.

C. Organization and Procedures

The Alaska Women's Commission directed its staff to conduct a statutory review for sex discrimination. To accomplish this effort the Commission research analyst was assigned as the project director to organize and coordinate the review. A determination was made that only substantive issues of sex discrimination would be examined since the Revisor of Statutes had a statutory responsibility to address gender-identifying pronouns and was in fact doing so.

Alaska's laws encompass forty-seven titles and over twelve thousand statutes. To carry out a project of this size and complexity required expansive knowledge and experience which included familiarity with legal concepts and issues as well as administration of the laws. Such resources were not entirely available within the Commission. Therefore, a plan was adopted that would request the assistance of the Alaska Bar Association and state government agencies to perform the initial review of the statutes. A formal presentation was made to the Alaska Bar Association by the Alaska Women's Commission that outlined the purpose of the review and the importance of the Bar Association's participation in this project. Following approval of the project, the Bar Association directed its Sections to elicit volunteers for the review.

A training session for the volunteers was conducted by the project director. Each attorney was given a training manual outlining the process to be followed in the review and examples of the two types of sex discrimination to be identified in the statutes: surface reading of the language that applies differently to persons depending on their sex and statutes that are not apparent on the face, but have a sex discriminatory impact when applied. The training session included a practice review utilizing examples of actual statutes. An example of the format for reporting was also provided. Assignment of statutes were apportioned based on the expertise of the attorneys and interest. About one-third of the titles were not reviewed by the volunteer attorneys, primarily because a determination was made by the Women's Commission and the volunteer attorneys that a number of titles would be unlikely to contain significant sex discriminatory provisions (i.e., Title 2, Aeronautics). An internal review process was developed to discuss findings and answer questions that the reviewers had. Attorneys would discuss their projects with colleagues and the chair of their section. If a problem could not be reconciled, the issue would be presented to the Women's Commission for further discussion.

At the same time, a similar effort was performed by state agencies. Governor Sheffield directed the commissioners and division directors to assess the statutes for sex discrimination that they operated under or implemented. Detailed information about the project and its process was further communicated to the commissioners by the project director. Training materials identical to those used in the session for the volunteer attorneys and an example of the format for reporting were sent out to each department by the Women's Commission.

As the agencies and volunteer lawyers completed their reviews, the Women's Commission hired an attorney to serve as the legal coordinator for the next phase of the project. Under the direction of the project director, the legal coordinator consolidated all of the information from the agencies and volunteer attorneys. In addition, the coordinator independently reviewed the Alaska Statutes in an effort to ensure the identification of as many sexually discriminatory statutes as possible. To aid in the identification process, the legal coordinator relied upon legal texts and periodicals discussing sex-discriminatory legislation that in part had been gathered by the project director from other states and national organizations. Also, Alaska statutes analogous to Iowa statutes identified in a comprehensive review of the 1983 Iowa Code for sex discrimination were scrutinized, which resulted in the identification of numerous additional statutes. In all, some 80 statutes were identified.

The legal coordinator then organized these statutes by subject matter. Each statute identified was analyzed, with Alaska case law, statutory history, and legal periodicals and similar statutes in other states consulted for reference. The draft report was then prepared and distributed to the Women's Commission, state departments, volunteer members of the judiciary and volunteer lawyers for comment.

Comments on the draft report were consolidated and then analyzed by the legal coordinator and the project director. Responses from the volunteer attorneys and state agencies, especially the Department of Law, were informative and often provided useful background and historical information regarding the interpretation of the statutes. A synopsis of the comments and suggested actions were presented to the Alaska Women's Commission for final action. These comments were integrated into the final report, which was presented to the Commission in May 1985.

The primary goal of this report has been the identification of those statutes with a potentially sexually discriminatory impact. However, the report also presents recommendations for statutory changes to ameliorate the discriminatory provisions. For some statutes, the sex discrimination is quite evident and the necessary recommendations straightforward. For a number of topics, however, the issues are far more complex and comprehensive recommendations for alternative statutory language are beyond the scope of this report. For these statutes, the recommendations presented are meant to serve as a starting point in a discussion aimed toward statutory reform.

D. Related Considerations

1. Use Of Gender-Identifying Pronouns.

As noted in the introduction, this report does not attempt to identify the numerous instances in the statutes where gender-identifying pronouns are used. An example of a statute using a gender-identifying pronoun is AS 05.05.020(b), which provides that the Commissioner of Athletics shall "adopt regulations governing athletics and athletic programs and contests as he considers necessary" (emphasis added). Presently, AS 01.05.031(c) directs the Revisor of Statutes to "edit and revise the laws as they are enacted by the legislature, without changing the meaning of any law, so as to avoid the use of pronouns denoting masculine or feminine gender." The Revisor is also directed to revise existing laws, without changing the meaning, to change all sections, when possible, to read in the third person if the use of personal pronouns cannot be avoided. AS 01.05.031(b)(1). Finally, AS 01.10.050(c) provides "words of any gender may, when the sense so indicates, refer to any other gender."

While these statutes make significant progress toward minimizing the use of gender-identifying pronouns, the goal should be the complete elimination of these terms, not merely their avoidance. The Revisor of Statutes has proven highly competent at eliminating the pronouns and AS 01.05.031 should explicitly require elimination, rather than avoidance. When elimination is completed, AS 01.10.050(c), providing that "words of any gender, when the sense so indicates, refer to any other gender," would no longer be necessary and could be repealed.

Elimination of these gender-identifying terms is necessary because agencies may be unfamiliar with the general provisions cited above. Reliance on the gender-identifying pronouns in the agency's own authorizing legislation may result in overt sex discrimination. For example, AS 05.10.100 states that an organization licensed to hold a boxing contest, sparring or wrestling match, or exhibition shall file with the athletic commissioner "a statement setting forth the name of each contestant, his manager, and other information" as required three days before any such contest is held. Evidently as a result of this provision and its use of the term "his manager," when two women wanted to hold a boxing match, there was considerable dispute as to whether women were permitted to do so under the law. Should personal pronouns be eliminated in all statutes, this type of dispute would not arise.

2. Relationship Limitations.

One issue not addressed by this report, but peripherally related to sex discrimination, can be termed "relationship discrimination." Numerous benefits and obligations created by the statutes are conditioned on whether two individuals are married.[3] Examples include workers' compensation death benefits,[4] a number of state retirement and health care benefits,[5] and the ability to jointly own real property with a right of survivorship.[6] State law also adopts federal estate tax provisions which allow for a substantial marital deduction in estate taxes unavailable to single individuals.

Cohabitants, regardless of gender, often do not receive legal recognition and the commensurate rights and duties such recognition brings, in the absence of a marital relationship. As societal values and interrelationships change over time, a new definitional structure may replace

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[3] See AS 23.30.215.

[4] See, e.g., AS 39.35.430.

[5] See AS 34.15.130 and AS 34.15.140.

[6] See AS 43.31.011.

the marriage standard in the determination of rights and obligations among individuals. Whether such a redefinition is now appropriate and, if so, what approach should be devised, is beyond the scope of this report. It is an area which should perhaps be considered by the Human Rights Commission and/or Equal Rights Commission.

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[7] See Alaska State Commission for Human Rights Jurisdiction in Marital Status Discrimination Complaints, Mem. Advice Attorney Gen. (January 4, 1980).

Insurance

1. Gender-Based Insurance Rates.

Presently, Alaska insurance statutes are interpreted by the State Division of Insurance to permit gender-based discrimination in insurance rates. Gender-based rates are used in many types of insurance -- including auto insurance, health insurance and life insurance. The Insurance Code prohibits insurance rates from being "unfairly discriminatory." AS 21.39.030. However, this term is not defined anywhere in the code. Other statutes appear to explicitly sanction the use of sex-differentiated rates. For example, AS 21.18.110(b)(1)(A) permits "a category of [life insurance] policies issued on female risks, ... [to] be calculated according to an age not more than six years younger than the actual age of the insured.[8]

Issue: The insurance industry remains a bastion of sex-based discriminatory practices. The insurance industry justifies this discrimination by asserting that an individual's gender is a valid predictor of risk. The present policy of the Division of Insurance of the State Department of Commerce and Economic Development is to sanction gender-based discrimination when statistically justified. In essence, such rate discrimination on the basis of sex is considered fair discrimination and, thus, not counter to the statutory prohibition against unfair discrimination.

The insurance industry must distinguish between groups that are subject to different risks. Premium rates, benefits and conditions of insurance coverage are determined by grouping individuals into classifications which represent the individual's level of risk for a given insurance coverage. The problem with gender-based rates in insurance is that an individual's sex is not necessarily a valid predictor of risk. While a correlation between sex and certain risks can be statistically illustrated, there appears to be no causal relation between these two factors.

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[8]Other provisions in the Insurance Code which appear to sanction gender-based insurance rates are AS 21.45.210 (misstatement of sex in annuities allows insurer to readjust payments to that due according to the correct sex of annuitant) and AS 21.45.300(k) (allows up to a six-year deviation on female risks from 1958 standard ordinary Mortality Table). See also AS 21.18.110(b)(1)(A), 21.84.220, 21.84.350 for references to mortality tables which may be sex discriminatory.

Thus, the gender of an automobile driver has little or no impact on the driver's performance, other conditions being equal. Public policy considerations require more adequate justification for rating factors than simple statistical correlation between gender and incidence of losses. Rather, insurance rates should be based on factors that are causally connected, not merely correlated like gender, to the risk of accident or loss.

> Causality refers to the actual or implied behavioral relationship between a particular rating factor and loss potential. The longer a vehicle is on the road, for example, the more likely it is that the vehicle may be involved in a random traffic accident; thus daily or annual total mileage may be viewed as a causal rating factor. To the extent that sex and marital status classifications may be defended on causal grounds, the implied behavioral relationships rely largely on questionable social stereotypes ... Given the significant changes in traditional sex roles and social attitudes which have occurred in recent years, justifications for rating plans on the grounds of such implied assumptions are unacceptable ... .
>
> [A]s rating characteristics, sex and marital status are seriously lacking in justification and are subject to strong public opposition, and should therefore be prohibited as classification factors.

Hartford Accident & Indemnity Co. v. Insurance Commissioner of the Commonwealth of Pennsylvania, 482 A.2d 542, 548-49 (Pa. 1984), quoting National Association of Insurance Commissioners, Report of Rates and Rating Procedures Task Force of the Automobile (D3) Subcommittee, November 1978, at 5-6 (footnotes omitted).

The insurance industry asserts that there are intrinsic differences between men and women which require gender-based variables in insurance rates. For example, insurers claim that women live longer than men and, therefore, should pay more for annuities and less for life insurance. Insurers also claim that women are safer drivers than men and, thus, should pay lower premiums.

Insurance companies argue that sex discrimination is, in fact, beneficial to women in these two types of insurance. Moreover, insurers may assert that sex

discrimination in health insurance, disability insurance and in annuities is not unfair, but merely a trade-off for the benefits women receive in auto and life insurance.

The National Organization for Women has compelling responses to each of these arguments. As regards auto insurance, NOW asserts that women, as a class, are overcharged for auto insurance. Overt discrimination on the basis of sex is chiefly restricted to younger drivers (under ages 25 to 30, often depending on marital status). This age group comprises less than 25 percent of the driving population. For all other drivers, there is little price recognition of the huge difference in average accident costs between adult women and men. By prohibiting gender-based rates, insurance companies will be forced to focus on factors that are causally related to the risk of accident. Since, as a class, men drive more and have more traffic violations, taking such factors into account will lower insurance costs for careful, sober, low mileage drivers, a class that is predominantly women.

In regards to life insurance, NOW asserts that women are, in fact, cheated by gender-based rates in this type of insurance. It asserts that the female discount is a sales gimmick in which the unit prices for the smaller policies most women buy are raised to recoup more than the amount discounted. As a result, women receive far less insurance per dollar spent for their lower premiums than men receive. Since many insurance agents and consumer publications do not provide side-by-side policies for comparison, the manipulation of the female "discount" can be effectively concealed from consumers.

NOW responds to the health insurance and pension/annuities insurance discrimination by acknowledging that the majority of American women have unisex health insurance and pensions. However, these provisions are the result of hard-won civil rights laws prohibiting sex discrimination by employers in health insurance and pension benefits. The 1983 Norris decision[9] by the United States Supreme Court made clear that Title VII's prohibition against sex discrimination in employment extends to pension benefits, but the decision only operates prospectively. Moreover, these federal provisions do not eliminate sex discrimination in individual insurance policies. As a result, the many women without access to employment-related insurance, or who have lost this insurance through divorce or loss of job,

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[9] 103 S. Ct. 3492 (1983).

must pay up to twice as much as men for individual policies, even when the medical costs of pregnancy are excluded.[10]

The Alaska Equal Rights Amendment prohibits discrimination on the basis of sex. A similar provision in Pennsylvania was recently relied on by the Pennsylvania Supreme Court to find that gender-based rates in auto insurance violated the state statute prohibiting rates that are "unfairly discriminatory." Hartford Accident & Indemnity Co. v. Insurance Commissioner of the Commonwealth of Pennsylvania, 482 A.2d 542 (Pa. 1984). The court held that the meaning of the prohibition against unfair discrimination in insurance had to be interpreted in light of the equal rights amendment to the state constitution. It concluded the insurance statute must be interpreted to include sex discrimination as one type of prohibited unfair discrimination.

Our own Equal Rights Amendment mandates the same interpretation of the unfair discrimination provision in Alaska insurance statutes. The continuing sanction of gender-based insurance rates runs directly counter to state policy and works to the economic disadvantage of women.[11]

Recommendation: The Director of Insurance in this state has indicated that present policy is to consider statistically-supported sex discrimination in insurance rates as "fair discrimination," and not in violation of present law. Clearly, statutory revision is necessary to ensure the elimination of this type of discrimination.

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[10]The source for the National Organization for Women material is a letter sent by the NOW Insurance and Pension Project to the Alaska Women's Commission in December 1984.

[11]This state policy against sex discrimination is also set forth in AS 18.80. AS 18.80.230 states that it is an unlawful practice for an owner, lessee, manager, agent, or employee of a public accommodation to discriminate on the basis of sex. This statute would appear to be open to the construction that it prohibits insurance companies from offering their services in a manner which discriminates on the basis of sex. Furthermore, under AS 18.80.255, the Division of Insurance is responsible for providing the services of the state without regard to sex. Arguably, permitting insurance companies doing business in Alaska to issue insurance policies on the basis of sex in rates, premiums, payments or benefits is violative of AS 18.80.255. As yet, these statutes potential applicability has not been litigated.

Several states have passed statutes prohibiting gender-based ratings in auto insurance.[12] The state of Montana has gone considerably further. It added to its civil rights provisions (the equivalent of our AS 18.80) the following provision:

> It is an unlawful discriminatory practice for any financial institution or person to discriminate solely on the basis of sex or marital status in the issuance or operation of any type of insurance policy, plan or coverage or in any pension or retirement plan, program, or coverage, including discrimination in regard to rates or premiums and payments or benefits.[13]

It is recommended that this language be enacted in Alaska. In addition, those statutes in the Insurance Code which appear to permit gender-based rates should be amended to expressly prohibit this practice.[14]

2. Conversion And Continuation Of Health Insurance Coverage

Typically, group health insurance available to an employee also covers the employee's spouse and children. However, the coverage available to the spouse and children often ceases with a change in family status such as death or divorce, or with a termination of employment. The termination of the health care benefits in these situations can result in the economic upheaval of part-time working women, homemakers, minor children and others who lose access to employment-provided group benefits.

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[12] These states are Hawaii (in 1974), North Carolina (in 1977), Massachusetts (in 1978), and Michigan (in 1981). The use of marital status for auto insurance pricing is also prohibited in these states.

[13] HB No. 358, signed by the Governor of Montana on April 19, 1983.

[14] See n.8 and accompanying text, infra.

Continuing health insurance coverage for a spouse and children can best be achieved by statutorily mandating the availability of a conversion privilege which would allow these individuals to obtain continued group coverage by paying a reasonable premium. In addition to this conversion privilege, these affected individuals should receive continuing coverage under the group plan for a specified time period, such as one year, at no cost to them before the conversion of coverage commences. With this approach, a surviving spouse and dependents of a decedent employee would not automatically be cut off from all health insurance benefits due to the employee's death. Instead, these individuals would be entitled to continued group coverage for a one-year period at no charge, after which they could continue to receive benefits through the group plan upon payment of a reasonable premium. This coverage would cease if the individuals became eligible to receive substantially similar benefits from another source. The same continuation/conversion privileges should be extended to divorced spouses, and to the employees themselves that leave the employment position.

The converted policy should provide a similar level of benefits as obtainable under the member's policy. In addition, legislation in this area should ensure that all affected persons are adequately notified of the conversion privilege whenever an event occurs which may terminate present coverage, and that an adequate time period for exercising the option be provided, during which continuation of coverage under the group policy is available.

The Commission on Sex Discrimination in the Statutes in New Jersey has recently drafted legislation for that state which addresses these concerns.[15] Although no statute is presently in effect in Alaska which would preclude continuation and conversion privileges from being available, it is recommended that additional legislation which would ensure such benefits were provided be added to the Alaska Insurance Code. Alternatively, or in addition, the creation of a state-administered group insurance plan for individuals who are otherwise without access to group insurance plans should be explored.[16]

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[15] State of New Jersey, Commission on Sex Discrimination in the Statutes, "Toward Economic Equity," January 1985, Third Report, pp. 114-18.

[16] The state of Minnesota currently operates such a plan.

Dissolution / Divorce

1. Separate Residences.

AS 25.24.110 allows a spouse in an action for divorce to obtain a separate residence or domicile from that of the other spouse "without reference among other factors to misconduct or consent of the other spouse." This present statute was enacted in 1974 as an amended version of an earlier statute. The prior statute had provided that in divorce actions, "Wives may acquire a separate residence or domicile from that of the husband without reference among other factors to misconduct or consent of the husband."[17]

Issue: Under the common law, the husband was considered the head of the household. In that role, the husband had the authority to choose the marital residence. As long as the husband's choice was reasonable, the wife was obliged to follow the husband and live under the circumstances her husband had chosen. Only if the marital unit had broken down was the wife free to establish her own separate domicile.

In Ellis v. Ellis, 8 Alaska 373 (Alaska 1933), the territorial court held "It is elementary that the duty devolves upon the husband to provide and furnish the home, and that it is the duty of the wife to occupy the home and to reside there unless the husband acquiesces or consents to her residence elsewhere or unless her husband's mistreatment justifies her in leaving and remaining away from home."

The present statute impliedly perpetuates this archaic common law rule.[18] While, as a practical matter, the statute may have little import, its symbolic significance clearly warrants its elimination from the statutes. By specifically acknowledging the right to separate residences only when divorce proceedings have be instituted, the implication is that separate residences are not expressly sanctioned in the absence of divorce proceedings.[19] Yet the stated policy of this state

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[17]Former AS 09.55.170 (§ 12.10 ch. 101 SLA 1962).

[18]See AS 01.10.010, which makes so much of the common law as is not inconsistent with the state or federal constitutions or state statutes the rule of decision in the state.

[19]Another example of this statutory presumption that
(Footnote Continued)

recognizes the ability of men and women to act independently regardless of marital status.[20] Alaska law should simply state that anyone can establish a residence where ever he or she wants without regard to sex or marital status. The common law rule to the contrary would then be specifically nullified.

Recommendation: Repeal AS 25.24.110 and add an additional provision to AS 18.80.255, as follows:

> The right of any person to become a resident domiciled in the state of Alaska shall not be denied or abridged because of sex or marital status. The domicile of one spouse does not fix by operation of law the domicile of the other spouse, which shall be determined by reference to the same factors as in the case of any other individual capable of having an independent domicile.[21]

2. Name Change Provisions.

A number of statutes address the ability of people to change their names upon divorce or dissolution of a marriage.

a. Marriage or Divorce. AS 09.55.010 gives the superior court jurisdiction to change the name of a person if there is a sufficient reason for the change "consistent with the public interest." The statute provides that "a

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(Footnote Continued)
married couples always live in the same residence is AS 23.10.055(12). This statute exempts certain live-in employment at child care facilities from State Wage and Hour laws. To be exempt, the employee must be "compensated on a cash basis exclusive of room and board at an annual rate of not less than (A) $10,000 for an unmarried person; or (B) $15,000 for a married couple." The statute inappropriately assumes that a married person would never be hired as an individual to be a live-in residential child careprovider.

[20] See Alaska Const. Art. I, § 3 [Amend. 1972]; AS 18.80.200.

[21] Source: B. Brown, et al., "Women's Rights and the Law," p.103 (1977).

change of name upon marriage or divorce" automatically meets this public interest requirement.

Issue: This statute was enacted before dissolution of marriage was created as an alternative procedure to divorce to terminate a marriage. This name change statute fails to specify that name changes pursuant to dissolutions should be presumed consistent with the public interest. The statute's failure to specify dissolutions may not, as a practical matter, be a problem but nonetheless deserves clarification. Since more women than men change their names in dissolution proceedings, there is some sexually discriminatory impact. Since the dissolution agreement is reviewed by the trial court, the potential for creditor's fraud when name changes are allowed in these proceedings is minimal.

Recommendation: Amend AS 09.55.010 to clarify that name changes during dissolutions automatically meet the public interest requirement.

b. Dissolution. AS 25.24.160(7) states that the judge in an action for divorce may "change the name of one of the parties." In dissolution proceedings brought by one spouse, the court is authorized to "restore that spouse's prior name, when so requested," pursuant to AS 25.24.230(b). When both spouses have brought the dissolution action, the court is authorized to "restore either spouse's prior name, if so requested." AS 25.24.230(e).

Issue: At the very least, these statutes should be consistent in setting forth what type of name changes are permissible in divorce and dissolution proceedings. Under present law, a new name can be adopted in a divorce proceeding. However, in a dissolution proceeding, only the prior name can be restored. In a divorce action, the court is authorized to change the name of only one of the parties. Where both spouses had changed their names at the time of marriage, such as by hyphenating together their surnames, the court is not specifically authorized to change both spouses' names in a divorce action. In a dissolution action, the court appears to have this power.

Recommendation: Revise these statutes to achieve consistency. Expand the divorce statute to allow either or both parties to change names at divorce. Revise the dissolution statutes to allow for any change of name instead of an exclusive limitation of restoration of a prior name.[22]

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[22]AS 25.24.210(d) should also be revised. This statute specifies that the petition for dissolution "shall request

(Footnote Continued)

Many men are changing their names at marriage and there would seem to be little risk to the public in allowing a name change by either spouse when a marriage terminates, whether to a prior name or to a totally new name.

3. Interim Spousal Support And Attorney's Fees During Divorce Proceedings.

AS 25.24.140(a) authorizes a court in a divorce proceeding to order the following:

> (1) that one spouse pay an amount of money as may be necessary to enable the other spouse to prosecute or defend the action;
>
> (2) for the care, custody and maintenance of the minor children of the marriage during the pendency of the action;
>
> (3) for the freedom of one spouse from the control of the other spouse during the pendency of the action;

Issue: There are two problems with this statute. First, the statute does not specifically authorize the court to award spousal maintenance, as opposed to child maintenance, during the pendency of the divorce action. Although spousal maintenance will usually be ordered when requested, arguments have been made in court that there is no authority to grant this type of alimony. As a result, the economically needy spouse (usually the wife) may have additional burdens of persuasion to overcome to obtain adequate support during the turbulent interim period of a divorce.

The second problem with this statute is the provision regarding attorney's fees in subsection (1). In practice, the amount of attorney's fees actually awarded pursuant to this statute is often insufficient. An insufficient award can, in turn, become bargaining material

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(Footnote Continued)
... that the prior name of spouse be restored, if desired by that spouse."

used by the more affluent spouse in the divorce negotiations.

The inadequacy of interim attorney's fee awards may be because only a percentage of actual attorney's fees is awarded in all other types of civil cases.[23] Perhaps because full attorney's fees are not awarded in other types of cases, judges are simply unaccustomed to making a full award of "all amounts necessary" in divorce proceedings. Clarification of this legislative intent would ensure an economically needy spouse the full opportunity for balanced representation in divorce proceedings.

Recommendation: Add a new subsection (4) to AS 25.24.140(a) which allows the court to order that one spouse pay the other an amount as necessary "for the care and maintenance of an economically needy spouse during the pendency of the action."

In addition, a new section (c) should be added to the statute to ensure an economically needy spouse obtains an amount of money for interim attorney's fees that is a reasonable approximation of the actual attorney's fees of the particular divorce proceeding. A provision as follows would aid in ensuring an adequate award:

> (c) In determining the amount payable pursuant to section (a)(1), the trial court shall award the full amount which in its estimation reasonably represents the amount necessary for the needy spouse to adequately prosecute or defend the action during its pendency, and shall clearly state its findings is this regard in the resultant order. This award shall be amended upon a showing that the amount previously awarded is inadequate or excessive.

4. Grounds For Divorce.

AS 25.24.050 sets out 10 different grounds for divorce. Only one of these grounds is a no-fault ground -- incompatibility of temperament. The other nine grounds all

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[23] See Alaska R. Civ. Pro. 82.

involve some sort of failure on the part of one of the parties. These grounds include adultery, conviction of a felony, and drug addiction.

Related to this statute are several other statutory provisions regarding the specific grounds for divorce. AS 25.24.070 provides that a confession of adultery is not alone sufficient to justify a divorce; additional evidence is required to obtain a divorce on this ground. AS 25.24.120 and .130 create several defenses to divorce, such as a defense of express forgiveness to a charge of adultery or conviction of a felony.

Issue: Although it is a rare divorce proceeding when any ground other than incompatibility is used, the threat of using the "fault" grounds is a very effective tool in a marriage riddled with unequal bargaining power. Many decisions in divorce discussions can be affected by threats of bringing evidence of fault grounds before the court, in spite of specific statutory provisions which indicate that such fault is irrelevant in the judge's decision-making.[24]

Recommendation: Repeal AS 25.24.050, except for Section (5)(c), with the result being that the sole ground for divorce would be incompatibility of temperament. The accessory statutes to the other grounds for divorce should also be repealed -- AS 25.24.070, .120 and .130. The fault grounds do not seem to add anything to the law and are a source of inequity in occasional cases. The public policy of Alaska is to grant divorces when necessary without reference to fault, making it appropriate to repeal all of the grounds except for incompatibility of temperament.

5. Child Custody.

AS 25.20.060 et seq. sets up procedures and standards for the determination of child custody when the parents dispute this issue. Under AS 25.20.060, "The court shall award custody on the basis of the best interests of the child." Neither parent is entitled to a preference in the awarding of custody. Id. Shared or joint custody can be awarded if the court determines that arrangement to be in the best interests of the child. Id. AS 25.20.100 requires the judge to state the reasons for not granting joint

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[24] See, e.g., AS 25.24.160(6).

custody if either of the parents has requested it. AS 25.20.090 sets out a non-exclusive list of factors for the court to consider in determining whether to award joint custody. These factors are supplementary to the custody factors set out in AS 25.24.150(c). AS 25.24.150(c) provides:

> In determining the best interests of the child the court shall consider
>
> (1) the physical, emotional, mental, religious, and social needs of the child;
>
> (2) the capability and desire of each parent to meet these needs;
>
> (3) the child's preference if the child is of sufficient age and capacity to form a preference;
>
> (4) the love and affection existing between the child and each parent;
>
> (5) the length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity;
>
> (6) the desire and ability of each parent to allow an open and loving frequent relationship between the child and the other parent.

Subsection (d) of this statute provides that "In awarding custody the court may consider only those facts that directly affect the well-being of the child."

Issue: The source of the joint custody provisions was a bill submitted to the legislature by a men's rights organization. The original language of the bill, as proposed, included an explicit preference for joint custody. The final language removed the preference and inserted the basic "best interests of the child" standard. As a result, present law contains no preference for joint custody. However, due to misinformation in the general public and the dynamics in many troubled marriages where there is unequal bargaining power, shared custody frequently results not because of an objective determination that the arrangement is in the best interests of the child, but as a reflection of the unequal bargaining power. In many of these marriages, the woman feels powerless, either because of some moral breach she may have committed or simply because of the gender-based roles in the marriage. When the husband

proposes joint custody (often as a threat), she will agree to it, resulting in an arrangement between the parties in which they are expected to exercise mutual decision making for the child. Yet, the basis of their relationship is that they cannot agree on equal terms and the child frequently suffers.[25]

The statutory requirement that the judge state reasons for not granting joint custody if either of the parties requests it is an attempt at seeking out this unequal bargaining power. However, in application, this seeking-out process is not something that judges are trained to do -- nor are the risks involved in joint custody so readily apparent that the judge or the parents would be able to discover them effectively. The result is that the shared custody statute, although making it clear that shared custody is an available remedy in an appropriate case, in many instances has perpetuated unequal bargaining power between husbands and wives to the detriment of the children.

Moreover, in all child custody cases, by allowing the court to consider any other factors the court "considers pertinent,"[26] the possibility exists that the court will consider parental lifestyle or parental sexual activity even if such conduct had no effect on the parent's relationship with the child. Women who choose an untraditional lifestyle, particularly one involving extramarital sexual activity, may fare poorly under such an open-ended standard, regardless of the quality of their relationship with their children. In contrast, similar behavior by fathers seeking custody may be regarded by the courts as insignificant or, in the case of employment or education outside the home, as exemplary.

Nor do the statutes expressly distinguish the custody determination from the child support obligation. If the judge considers the income of each parent as a factor in determining the best custodian, women -- particularly homemakers -- would be seriously disadvantaged. The financial ability of each parent is a distinct issue from the custody determination, regardless of the custody arrangement which results. The statute should make explicit

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[25]For a thorough discussion on the impact of joint custody preferences on women and children, see J. Schulman, "Second Thoughts on Joint Child Custody: Analysis of Legislation and its Implications for Women and Children," 12 Golden Gate L. Rev. 539 (1982).

[26]AS 25.20.090(9).

that a joint custody arrangement by no means precludes an award of child support from one parent to the other.[27]

Recommendation: Several changes to present law are suggested in an attempt to achieve the custodial arrangement that is truly in the best interests of the child.

First, the judge should be required to take a more active role in the custody determination process. The judge should actively solicit evidence on each of the considerations enumerated in AS 25.24.150(c). In this regard, the full history and scope of agreements between the parties regarding custody should be actively solicited by the judge and admitted into the proceedings. Such a requirement could be added to AS 25.20.060 as an additional subsection to read as follows:

> In determining the best interests of the child, the judge shall actively solicit evidence from the parties on each of the factors enumerated in AS 25.24.150(c). In addition, the judge shall fully inquire of each of the parties of any and all understandings reached between them regarding custody arrangements.

While this requirement for fuller judicial participation would require additional time and expense by the judiciary to be spent on cases, the high societal importance of protecting children's interests in custody determinations would certainly appear to make such expenditures highly justifiable.

Second, the requirement that the judge state the reasons for denial of shared custody should be expanded to require the court to explain its reasoning on each of the enumerated factors in every child custody determination. Although judges are required to state their findings in every case, the custody provisions should be more explicit on this point instead of referring solely to the denial of shared custody situations. Custody law would become clearer and more fully articulated in all custody determination cases.[28]

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[27] For a fuller discussion of these issues, see N. Polikoff, "Why Are Mothers Losing: A Brief Analysis of Criteria Used in Child Custody Determinations," 7 Women's Rights L. Rptr. 235 (1982).

[28] See J. Schulman, supra, n.8, at 560-561.

Third, the statute should specifically exclude from the trial judge's consideration in a custody proceeding evidence of either party's material wealth. An affirmative statement in this regard would stress that the obligation of child support is owed by both parents irrespective of the custody determination. In a similar vein, the statute should stress that the lifestyle of either parent should not be considered as a separate issue, but should only be considered relevant insofar as it may directly affect a parent-child relationship.

For example, the following sections could be added to AS 25.20.060:

> The court may not consider conduct of a proposed custodian that does not directly affect the proposed custodian's relationship to the child.[29]

> Shared custody shall not eliminate the duty of child support, nor shall shared custody alone constitute grounds for modification of a support order.[30]

All of this proposed language and reform is meant only as a starting point for prompting discussion and further analysis in a complex area that clearly needs statutory modification to ensure greater sex equity. Specifically, the development of statistical information regarding Alaska child custdoy determinations would help assess and prioritize where reform is needed.

6. Dissolution Proceedings.

AS 25.24.200-.260 creates a simplified dissolution procedure for terminating a marriage. The procedure, enacted in 1976, is designed to allow people who are in agreement as to the division of property and child custody arrangements to obtain the termination of the marriage without the need to pay $300 to $500 in attorney's fees for a truly uncontested divorce. The parties petition the court for the termination of the marriage and present the property division and custody arrangement to which they have agreed.

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[29] See Former Colo. Rev. Stat. § 14-10-124 (1974).

[30] See Colo. Rev. Stat. § 14-10-123.5 (Supp. 1984).

The court is authorized to grant the petition, thereby judicially enforcing the parties' agreements and terminating the marriage, if it finds that the spousal agreements are "not grossly unfair, unjust, or inequitable and are in the best interests of the children of the marriage, if any; ..."[31]

Issue: The dissolution procedure is widely used, serves an important and necessary function, and should be retained. However, the present dissolution procedure does not adequately ensure protection of the parties. The unequal bargaining power between spouses which leaves many women vulnerable during a marriage very easily carries over into "agreements" people place in their dissolution petition. The court is, under the dissolution statute, required to take an active role in inquiring into the basis of the parties' agreements.[32] Yet, as a practical matter, this judicial inquiry is often a series of leading questions which is unlikely to expose inequities. The situation is exacerbated when judgment is entered as a result of this typically perfunctory review, since no matter how perfunctory the court's review of the agreements when issuing the judgment, a party faces quite a difficult burden to overturn a judicial stamp of approval.[33] Moreover, while requiring the court to inquire into the equities of the arrangements, judgment can be entered as long as the judge determines the agreements are "not grossly unfair." The statute contains no articulation of what would constitute gross unfairness or under what circumstances special scrutiny of agreements is warranted.[34]

Recommendation: Several approaches would help solve these problems. The first is to create a generalized source of knowledge about the law regarding equitable distribution of property and child custody issues. A spouse in the less economically powerful position (usually the wife) could then obtain information to better resist inappropriate demands from the other spouse. The dissolution of marriage packets available at the courthouse should contain a more thorough discussion of each party's rights under our equitable

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[31] AS 25.24.230(a)(2).

[32] AS 25.24.220(d).

[33] See Alaska R. Civ. Pro. 60(b).

[34] For a thorough discussion of these problems, see S. Sharp, "Fairness Standards and Separation Agreements: A Word of Caution on Contractual Freedom," 132 U. Pa. L. Rev. 1399 (1984).

distribution laws. The establishment of a legal information office separate from the judiciary to serve the public on this issue should also be contemplated.

A second approach would be to revise the statute so as to ensure greater judicial review of spousal agreements. One way to ensure greater judicial participation would be to specify in the statute those situations where the need for judicial scrutiny is at a premium. These types of situations may include where one party is represented by counsel but the other is not; where one party would receive over 60 percent of the marital property under the parties' proposed agreements; or where one party is obligated to pay a relatively high or low amount of spousal maintenance or child support. Like child custody determinations, a requirement of greater judicial participation regarding the equity of a property division agreement would require additional judicial resources to be targeted toward domestic relations cases. Yet, the importance of the family and the need to ensure adequate protection of the interests of the spouses and the children when a marriage is terminating demand that additional judicial resources be directed towards these proceedings.

Additionally, in all dissolution proceedings, the court should be required to actively solicit evidence from both parties regarding the assets subject to equitable distribution, the value of the assets, the parties' proposed manner of dividing these assets, what assets of either party are being excluded from the division, and the reasons for exclusion. At the very least, both parties should be required to attend the proceeding (except upon a finding that there are compelling circumstances warranting absence). Alaska law is becoming increasingly clear on the factors to be considered in making an equitable distribution of property in divorce proceedings.[35] A meaningful application of these factors by the judge should be required in dissolution actions.

Consideration should also be given to whether retention of the gross inequity standard is appropriate. A requirement that a division be equitable before it may gain judicial approval would help eliminate the occurrence of poverty among divorced women who were cajoled into "agreeing to anything." The public policy of this state in according special protections and benefits to married individuals[36]

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[35] See, e.g., Wanberg v. Wanberg, 664 P.2d 568 (Alaska 1983).

[36] See discussion on Relationship Limitations, supra.

demands that these protections extend to the time when they are perhaps most needed -- when a marriage is terminating. To require an equitable division of property, rather than merely one which is not "grossly inequitable," seems highly warranted.[37]

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[37]Consideration should be given to the wholesale revision of the statutory treatment of property acquired during marriage. The recently developed Uniform Marital Property Act (UMPA) offers a more structured system for sharing property of the marriage than exists under our present equitable distribution law. Adoption of the Act may help accord both spouses a more equal status in the vast majority of marital terminations in which the property is dividied according to the parties' agreement, not by the judiciary. Wisconsin became the first state to incorporate the UMPA into law in April 1984 (effective January 1, 1986). See "State Government News," June 1984, p. 16.

Parent-Child Relationship

1. Parental Responsibility For Children's Actions.

AS 34.50.020 imposes civil liability of up to $2,000 on "either parent or both parents or the legal guardian of person having legal custody" for acts of vandalism of their minor child. Similarly, AS 09.65.110(b) provides that "a person having legal custody of an unemancipated minor is liable in a civil action" when the minor shoplifts.

Issue: When parents are divorced, often one parent (and more often the mother) is awarded legal custody and the other parent has visitation rights (physical custody during specified times). To illustrate the potential problem with the above statutes, assume a mother has legal custody of the child, but the father has physical custody of the child (visitation rights) for the summer months. Under AS 34.50.020, the mother would bear financial responsibility for summer acts of vandalism of the child, even though the child was then living with the father. Under the shoplifting responsibility statute, the father in this example would have no civil liability, since he is not the legal custodian.

Recommendation: These statutes should be changed to provide that the parent having physical custody of the child at the time of the shoplifting or vandalism should be responsible for these acts. This responsibility should be jointly shared with the legal custodian.

2. Failure Of Custodial Parent To Permit Visitation With Child By Non-Custodial Parent.

When a marriage is terminated and the court awards legal custody of a child of the marriage to one parent, it will usually also order that the non-custodial parent retain specified visitation rights with the child. AS 25.24.300 provides that when a visitation order sets out the specific times when visitation will occur (for example, the first and third weekends of every month), and the custodial parent unjustifiably fails to permit visitation at that specified time, the non-custodial parent is entitled to bring a lawsuit against the custodial parent for damages. The non-custodial parent can recover $200 from the custodial parent for each occasion visitation was not permitted. In addition, AS 11.51.125 makes this failure to permit time-specific visitation a criminal violation.

Issue: In many divorce and dissolution cases, the woman is the legal custodian of the child while the man has visitation rights. As a result, these two statutes imposing both criminal and civil sanctions when the custodial parent fails to permit visitation have a greater impact on women. Typical legal advice to an individual who is to be a custodial parent is to attempt to have the custody order be in general rather than specific terms to avoid possible criminal and civil liability.

Even in the absence of these statutes, a non-custodial parent who was denied visitation could still obtain relief from the court. The monetary sanction and criminal penalty are stronger, additional measures designed to further aid in ensuring visitation occurs.

Recommendation: There are strong public policy reasons for enforcing visitation rights of non-custodial parents. Another court order may simply be insufficient to enforce visitation when it has been persistently denied. For this reason, it is recommended that the civil damages provision of AS 25.24.300 be retained. However, the criminal penalty of AS 11.51.125 is duplicative, has been rarely relied upon, if at all, and would appear to aid little in achieving the goal of ensuring visitation. Moreover, the court still retains its discretionary power to hold a person in contempt for a willful failure to abide by the terms of a court order. Accordingly, the repeal of AS 11.51.125 is recommended.

3. Out Of Wedlock Children.

Under AS 25.20.050, a procedure is established for identifying the parentage of children born out of wedlock when the parentage is disputed. Typically, the statute has relevance for establishing a man's paternity, since the natural mother of the child is nearly always undisputed. Under the statute, a parent who subsequently marries the undisputed parent, or who acknowledges in writing being a parent, or whose parent status is established in court, will be designated on the birth certificate of the child. The child will also become the legal heir of this parent and entitled to support from this parent during minority. The procedure to establish this parentage is termed "legitimation," and results in what the law terms a "legitimate child."

Until 1984, the statute employed sex-based terminology, and allowed solely for a determination of paternity. The recent amendment replaced this terminology with the sex-neutral term of "putative parent."

Although under the present statute a child need not be born to a married couple in order to be legitimized, this was not always the case. The original legitimation statute, enacted in 1949, allowed only subsequent intermarriage between the parents as the sole means to legitimate a child.[38] However, under the present statute, the definition of a legitimate child has been expanded to encompass a child whose parents are ascertained in addition to children born to a marital or after-arising marital relationship.

The following statutes, however, in one way or another, do not fully conform to this broadened concept of legitimacy. While not all these provisions have a direct sexually discriminatory impact, revision is suggested simply because it is far more often the mother of an out-of-wedlock child who, in addition to the child, is stigmatized by the classification of "illegitimacy."

An additional way to address this problem is to adopt a statute similar to the Uniform Parentage Act (UPA) to replace AS 25.20.050. Under the UPA, the common law classifications of "legitimate" and "illegitimate" are eliminated. The parental-filial relationship of mother and child is generally established by proof that the woman gave birth to a child. The UPA creates a rebuttable presumption that the parental-filial relationship exists between father and child if there were an attempted or actual marital relationship between the man and the mother, or an acknowledgment of paternity by the man, or a court order establishing paternity. The resultant elimination of the somewhat offensive terminology of "legitimate" and "illegitimate" certainly would appear desirable.

a. Incest. AS 11.41.450 criminalizes incest. The statute provides that this crime is committed when an adult "engages in sexual penetration with another who is related, either legitimately or illegitimately," in one of the specified relationships set out in the statute (i.e., brother and sister of the whole or half blood).

Issue: This statute evidently uses the term "legitimacy" in its narrow sense, meaning in relation to marital status of the perpetrator of incest or the perpetrator's ancestors. Given AS 25.20.050, the phrase "legitimately or illegitimately" should be deleted, as deletion would not affect in any apparent way the acts criminalized.

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[38] § 21-3-3 ACLA 1949.

Recommendation: Delete the phrase "either legitimately or illegitimately" from AS 11.41.450.

b. Artificial Insemination. AS 25.20.045 provides that:

> A child, born to a married woman by means of artificial insemination performed by a licensed physician and consented to in writing by both spouses, is considered for all purposes the natural and legitimate child of both spouses.

Issue: There are several problems with this statute. First, the phrase "and legitimate" is unnecessary. A natural child of both spouses born during marriage is legitimate, making the phrase in the statute redundant.

The statute should be expanded to specifically recognize the right of a single woman, or married woman in the absence of her husband's consent, to give birth by means of artificial insemination.

The statute should also ensure that an anonymous sperm donor is protected from paternity obligations. Theoretically, at least, under present law, a paternity obligation could be imposed on a donor under AS 25.20.050, by establishing the natural parentage of a child in court proceedings.

Recommendations: Delete the phrase "and legitimate."

A new subsection to the statute as follows is proposed:

> The donor of semen provided to a licensed physician for use in artificial insemination of a woman other than the donor's wife is not considered to be the natural father of a child conceived unless the donor and the woman agree in writing that the donor is the natural father.[39]

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[39]This provision is from the Uniform Parentage Act and has been adopted with some variations in California (Cal. Civ. Code § 7005(b) (West 1983); Washington (Wash. Rev. Code. Ann. § 26.26.050(2); and Wyoming (Wyo. Stat. § 14-2 103(b) (1978).

This provision should be sufficient to impliedly recognize the right of single women to receive artificial insemination, although a specific statement in this regard may be more clear.[40]

The issues of sperm donation and artificial insemination are extremely complex, both factually and legally. Further study of these issues is clearly warranted.

c. Actions To Establish Parentage. AS 47.23.040 allows the Child Support Enforcement Agency to appear on behalf of a minor child or its mother in an action to establish paternity.

Issue: This statute accords a right to women that is not accorded to men. While uncommon, a father may need to bring a maternity action to enforce the child support obligation of the child's mother. The statute does not authorize the agency to appear on behalf of a father in this position.

Recommendation: Like AS 25.20.050, the sex-based terminology of this statute should be replaced with the sex-neutral term such as "putative parent."

d. Child Custody Proceedings. AS 25.20.060 deals with child custody proceedings. Section (b) of this statute provides that "[n]either parent, regardless of the question of the child's legitimacy, entitled to preference in the awarding of custody."

Issue: Under AS 25.20.050, a child with two acknowledged parents disputing custody is, by definition, legitimate. AS 25.20.060 is using the term "legitimate" in its restricted sense, meaning children of a marriage, and is therefore inconsistent with section .050. Moreover, the phrase "regardless of the question of the child's legitimacy" does not add to or limit either parent's rights in any way. Its elimination may actually clarify that neither parent has a statutory preference in child custody determinations.

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[40] A good discussion of the legal problems associated with artificial insemination is a recent article by Susan Eisenman, "Fathers, Biological and Anonymous, and Other Legal Strangers: Determination of Parentage and Artificial Insemination By Donor Under Ohio Law," 45 Ohio St. L. J. 383 (1984). A related topic on which no legislative action has as yet been taken is surrogate parenting.

Recommendation: Delete the phrase "regardless of the question of the child's legitimacy" from AS 25.20.060.

e. Invalid Marriages. AS 25.05.052, .061 and .311 deal with invalid marriages. In each of these statutes is a provision which makes children of the marriage "legitimate" when the marriage is later validated.

Issue: These provisions all use the term "legitimate" in its restricted sense. Moreover, these statutes are all unnecessary since AS 25.20.050(a) legitimizes a child when the putative parent subsequently marries the undisputed parent.

Recommendation: Delete those portions of the above three statutes which purport to legitimize the children of an initially invalid marriage when the marriage is subsequently validated.

f. Birth Certificates. AS 18.50.160 contains several provisions addressing the preparation of birth certificates by the Bureau of Vital Statistics.

(1) AS 18.50.160 sets out a procedure for registering live births. Section (c) states that "When a birth occurs outside an institution, the certificate shall be prepared and filed by one of the following in the indicated order of priority: ... (3) the father, mother, or, in the absence of the father and the inability of the mother, the person in charge of the premises where the birth occurs."

Issue: The father arguably has higher priority to file than the mother. Also, the father's potential absence is recognized while the mother's potential inability is recognized. No identifiable purpose is served by this sex-based discrimination.

Recommendation: Change subparagraph (3) to read "a parent or, if a parent is unable, the person in charge of the premises where the birth occurs."

(2) Paragraph (f) of AS 18.50.160 provides that "In the case of a child born out of wedlock, the certificate of birth shall be filed in accordance with (a), (b), and (c) of this section unless the state registrar directs another procedure."

Issue: No apparent purpose is served by this provision which gives the state registrar the discretion to treat unmarried parents different from married parents.

Recommendation: Delete paragraph (f) of AS 18.50.160.

g. Workers' Compensation Benefits. AS 23.30.255 contains a number of definitions for purposes of workers' compensation benefits. The term "child" is defined to include an "acknowledged illegitimate child dependent upon the deceased" employee.

Issue: The phrase "acknowledged illegitimate" child is self-contradictory. Under AS 25.20.050, an acknowledged child is legitimate.

Recommendation: In light of AS 25.20.050, the phrase "or acknowledged illegitimate child" should be deleted, and the statutory definition amended as follows: "Child" includes "a child legitimated under AS 25.20.050."

In conclusion, an overall reform of statutes regarding out-of-wedlock children is recommended. The term "illegitimate" is offensive to many people, and its negative connotations may be felt most strongly by single parents. Moreover, use of the term can be eliminated entirely from the statutes, as has been done in a number of other jurisdictions that have adopted the UPA. Whether the UPA should be adopted in Alaska and, if so, to what extent the UPA should be modified for integration into present Alaska law, warrants serious consideration.

4. Housing Discrimination On The Basis Of Parenthood.

AS 18.80.240 provides that it is unlawful to discriminate on the basis of "sex, marital status, changes in marital status, pregnancy, race, religion, color or national origin" when selling, leasing or renting real property. However, the statute specifically permits "the sale, lease or rental of classes of real property commonly known as housing for 'singles' or 'married couples' only."

Issue: The present statute permits discrimination in housing on the basis of parenthood. The failure to prohibit such discrimination by statute is perhaps most strongly felt by single parents, whose typically lower wage earnings than a two-adult household mean rental property is more commonly relied on for housing. When "no children allowed" as a rental policy is permitted by statute, single parents face a shortage of affordable, decent housing.

Recommendation: Amend AS 18.80.240 to prohibit housing discrimination on the basis of parental status. Legislation introduced by Representative Hurlbert in the 1982-83 legislative session would have amended the statute to prohibit this discrimination.[41]

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[41] HB 131 (introduced 01/28/83).

A committee substitute for that bill would have exempted certain classes of real property from the parenthood discrimination prohibition. The exempt classes included a private residence offered for short-term occupancy, housing established primarily for the handicapped, developmentally disabled or elderly, dormitory housing, and efficiency and one-bedroom housing units. By allowing discrimination on the basis of parenthood in these classes, particularly with one-bedroom housing, access by single parents to affordable and adequate housing would remain restricted. The initial bill, which absolutely prohibited parental status discrimination, seems preferable. Then, after the statute is in effect, if a need for exemptions for specific classes of property becomes apparent, appropriate limiting legislation can be proposed.

Pregnancy And Related Issues

1. Pregnancy Leave For Public Employees.

AS 39.20.225(b)(4) allows female public employees and officers to take personal leave for pregnancy and childbirth for up to nine weeks. No corresponding provision entitles male employees to personal leave for pregnancy and childbirth. Nor is there any provision which accords personal leave for the adoption of a child.

Issue: Fathers as well as mothers should be able to take a period of time away from their jobs in order to participate in the initial care of newborn or newly-adopted children. Recently proposed legislation[42] would authorize both paternal and maternal leave for up to 16 weeks, and allow a public employee to receive credit for retirement benefits during this absence.

Recommendation: Amend AS 39.20.225(b)(4) to accord men as well as women the right to take personal leave at the time of the birth of a child. In addition, amend the statute to accord both men and women the right to personal leave in connection with the adoption of a child by an employee. Passage of HB 238 would accomplish these goals.

Of far greater societal impact would be legislation according all men and women, not just public employees, the assurance of their jobs for a specified period for disability and maternity/paternity leave.

2. Registration Of Fetal Deaths.

AS 18.50.240 governs the procedures for the registration of fetal deaths. The statute requires the registration with the Bureau of Vital Statistics of all fetal deaths if the fetus were 20 weeks or older at the time of death. The filing of a death certificate for a product of a pregnancy of less than 20 weeks is left to the discretion of the Bureau of Vital Statistics. Thus, under present law, the Bureau of Vital Statistics is given the authority to determine whether or not fetal death certificates for fetuses under 20 weeks will be required, available on a permissive basis, or not available at all.

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[42] See HB 238, introduced February 25, 1985 by the Governor at the request of the Alaska Women's Commission.

The Bureau of Vital Statistics' present regulation makes the filing of a certificate in these circumstances an optional procedure.[43]

Issue: By according the Bureau of Vital Statistics discretionary authority to register fetal deaths when the fetus is under 20 weeks, there is the potential for undue interference with a woman's right to an abortion. Although the present regulation makes the filing of a fetal death certificate for the under-20-week-old fetus an optional procedure, the statute would permit the Bureau of Vital Statistics to require that a certificate be filed. Such a requirement appears unnecessary and inappropriately interferes with a woman's freedom of choice regarding the abortion decision.

Recommendation: Amend AS 18.50.240 to expressly prohibit the Bureau of Vital Statistics from making the filing of a fetal death certificate mandatory for a fetus of less than 20 weeks in the absence of a public health emergency warranting the need for such statistical information. This recommendation would ensure that the present regulation remains in effect in the future.

3. Abortion Regulations.

AS 18.16.010 regulates abortions. The statute places four separate restrictions on a woman's right to decide whether to have an abortion. These are:

(1) The abortion must be performed by a licensed physician or surgeon;

(2) The abortion must be performed in a hospital or approved clinic;

(3) Consent must have been received from the parent or guardian of an unmarried woman who is less than 18 years of age; and

(4) The woman must have been domiciled or physically present in the state for 30 days before the abortion.

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[43] See 7 AAC 05.450.

Issue: While the first two requirements further the state's interest in maternal health and appear justifiable restrictions to be imposed on all abortions, the other two requirements unnecessarily interfere with a woman's constitutionally protected right to decide whether to have an abortion and appear to be of highly dubious constitutional validity.

As to the mandatory consent requirement for unmarried minors, the United States Supreme Court has conclusively held that a state may not impose a parental consent requirement on the decision of a minor to undergo an abortion. In Bellotti v. Baird, 443 U.S. 662, 61 L.Ed.2d 797 (1979), the Court held unconstitutional a Massachusetts statute that required an unmarried woman under 18 to obtain the consent of both parents to an abortion. The statute further provided that if one or both parents refused, consent could then be obtained by court order if good cause were shown for the abortion despite the parents' objections.

The Bellotti court held that if the state seeks to require a pregnant minor to obtain one or both parents' consent to an abortion, it must provide an alternative procedure whereby authorization for the abortion can be obtained. The minor must have the opportunity to use the alternative procedure directly without first consulting or notifying her parents. 443 U.S. at 647, 61 L.Ed.2d at 816.[44]

Clearly these minimum federal constitutional protections are not accorded by Alaska's present statutory provision. No alternative judicial procedure whatsoever has been established to the parental consent provision.

The second objectionable requirement in the present abortion statute is the 30-day physical presence requirement as a prerequisite to obtaining an abortion in the state. While short-term residency requirements may have some validity as a condition to receiving state benefits, no such benefit is at issue here.[45] Rather, the woman's abortion

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[44] See also City of Akron v. Akron Center for Reproductive Health, 103 S.Ct. 2481, 76 L.Ed.2d 687 (1983).

[45] See e.g., Sosna v. Iowa, 419 U.S. 393, 42 L.Ed.2d 532 (1975) (upheld one-year residency requirement before access to state court for divorce petition). But cf. Zobel v. Williams, 457 U.S. 55, 72 L.Ed.2d 672 (1982) (Alaska permanent fund dividend program based on years of residency held unconstitutional as state showed no valid interests that were rationally served by the distinction.

decision is a private matter between her and her physician during the first trimester of pregnancy. No compelling state interest in maternal health is advanced by the use of a 30-day waiting period.[46]

Recommendation: The 30-day residency requirement of the statute should be repealed. The minor parental consent provision should be revised to at the very least accord a minor pregnant woman the federal constitutional rights to which she is entitled. Further study on whether any parental or judicial consent requirement should be imposed at all on a minor's decision to terminate a pregnancy should be undertaken.

4. Prenatal Blood Tests.

AS 18.15.150 requires that each pregnant woman in this state undergo a blood test to determine whether she has syphilis.

Issue: This statute requires only pregnant women to be subjected to a blood test, and this has a sexually discriminatory impact. However, communication with area physicians indicated that the protection of the fetus from latent syphilis carried by the mother makes this test absolutely justifiable for public health reasons.

Recommendation: Retain this statute without amendment.

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[46] See City of Akron, supra, 103 S.Ct. at 2503 (no "legitimate state interest is furthered by an arbitrary and inflexible waiting period").

Sexual Assault

1. Marital Rape Defense.

AS 11.41.445(a) creates a marital defense to sexual assault crimes. Under this statute, one spouse cannot be convicted of sexually assaulting the other spouse, unless the spouses were living apart or the victim spouse was physically injured by the sexual assault. In a situation where one spouse uses verbal threats or other non-physically injurious means to force the other spouse to have non-consentual sexual intercourse, the aggressor spouse cannot presently be held guilty of sexual assault.

Issue: While this statute, as written, uses nondiscriminatory language, it impacts females far more than males because victims of sexual assault in a marital relationship are usually female. This statute affords some protection to the victim spouse by allowing prosecution when physical injury has occurred or the couple no longer lives together. However, it nonetheless fails to fully protect the victim spouse from the commission of some types of sexual assault crimes by the aggressor spouse.

Several states have eliminated any spousal defense in their sexual assault criminal codes. For example, New Hampshire's criminal statutes contain a provision which expressly eliminates any spousal defense to all sexual assault crimes.[47] In Florida and Nebraska, no spousal exception is contained in the statutes.[48]

Recommendation: The bar to sexual assault prosecution in the absence of physical injury between married, cohabitating individuals should be eliminated. AS 11.41.445(a) should be repealed, and a provision similar to New Hampshire's which expressly and completely eliminates the spousal relationship defense to sexual assault crimes enacted in its place.

At the time of this printing, the state legislature had passed legislation which would eliminate the spousal relationship defense and it is anticipated that the Governor will sign it into law. SB 29 amends AS 11.41.445(a) to read that "it is an affirmative defense [to a sexual assault charge] that at the time of the alleged offense, the victim was the legal spouse of the defendant

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[47] N.H. Rev. Stat. Ann. § 632-A:5 (Supp. 1983).

[48] See Neb. Rev. Stat. § 28:317-323 (1979); Fla. Stat. Ann. § 794.011 (West 1976); see also State v. Smith, 401 So. 2d 1126 (Fla. App. 1981).

unless the offense was committed without the consent of the victim."

2. Evidence Of Past Sexual Conduct Of Sexual Assault Victim.

AS 12.45.045 governs the admission of evidence of a victim's prior sexual conduct in a trial for sexual assault. The statute is an effort to protect the victim from being subjected to unnecessary and humiliating cross-examination about the victim's prior sexual activities. The statute requires that whenever the accused seeks to present evidence of the victim's prior sexual conduct before a jury at the trial, the evidence must first be presented to the judge, out of the presence of the jury. There, the judge determines whether the value to the accused of presenting the evidence outweighs the prejudicial impact that telling this evidence to the jury will have on the victim. If the judge determines the value outweighs the harm, the evidence will be admitted. Conversely, if the judge determines that with some or all of the evidence the prejudicial impact outweighs the value, this evidence will be excluded. Finally, the statute requires a persuasive showing before evidence of the victim's sexual conduct occurring more than one year before the date of the offense charged can be admitted. In other words, evidence of prior sexual conduct that occurred over one year before the alleged offense is presumed inadmissible in the absence of a strong showing by the defendant to the contrary.

Issue: This statute is a commendable attempt to balance the right to a trial of an individual defendant accused of sexual assault and the countervailing sexual assault complainant's right to privacy. In practice, the statute tends to impact differently depending on a person's sex, since far more males than females are accused of sexual assault crimes and far more females than males are sexual assault victims.

The problem with the statute lies in its failure to provide more precise guidelines on the admissibility of this type of evidence. The statute does not distinguish prior sexual conduct between the victim and the accused from prior sexual conduct between the victim and a third party. Prior sexual conduct between the victim and the accused would typically have greater relevance on issues such as the victim's consent or lack of consent to the sexual assault on trial. Nor does the statute distinguish those situations where the accused seeks to introduce the evidence solely to

impeach the credibility of the victim from the situation where the past sexual behavior may account for the presence of semen, pregnancy or disease when at issue in the trial.

Absent such specific guidelines, it is left to the trial judge's discretion to make these assessments on a case-by-case basis.[49] Greater specificity in the legislation could assure more uniform and concrete protections of the legitimate interests of both the complaining witness and the defendant. The lack of specificity in the present statute raises the possibility that this type of evidence will be presented in open court without adequate restrictions.

Recommendation: The statute should be rewritten in a manner which makes a determination of admissibility dependent on whether the evidence of prior sexual conduct is relevant to a disputed fact in the case or if it is only sought to impeach the complainant's credibility. The statute should also differentiate evidence of prior sexual contact between the complaining witness and the defendant from evidence of the complaining witness' prior sexual contact with third parties. The latter should not be admissible on the issue of consent.

The one-year presumption of inadmissibility in the present statute should be retained.

A statute which more precisely defines these various uses of evidence of the victim's sexual conduct would aid in ensuring more uniform protection of the sexual assault victim's right to privacy in criminal proceedings, without unduly infringing on the defendant's right to a fair trial.

Proposed Alternative To AS 12.45.045[50]

Evidence of past sexual conduct in trials of sexual assault and attempt to commit sexual assault:

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[49] See Kvasnikoff v. State, 674 P.2d 302, 304 (Alaska 1983) (trial court's ruling on admissibility of evidence of prior sexual conduct will be upheld by appellate court in the absence of "clear abuse of discretion").

[50] This proposed statute is derived from Michigan's statute on this issue. Mich. Comp. Laws § 750.520(j) (Supp. 1984). See also B. Brown, et al., "Women's Rights and the Law," at 65 (1977).

(a) In prosecutions for the crime(s) of sexual assault in any degree, sexual abuse of a minor in any degree, or unlawful exploitation of a minor, or an attempt to commit any of these crimes, evidence of specific instances, evidence of the complaining witness' sexual conduct, opinion evidence of the complaining witness' sexual conduct, and reputation evidence of the complaining witness' sexual conduct shall not be admitted unless and only to the extent that the judge finds that the evidence is material to a fact at issue in the case, that its inflammatory or prejudicial nature does not outweigh its probative value, and that it is evidence of either of the following two types:

(1) Evidence of the complaining witness' past sexual conduct with the defendant; or

(2) Evidence of specific instances of sexual activity showing the source or origin of semen, pregnancy or disease.

(b) When the defendant seeks to admit evidence described in subsection (a)(1) or (2), the defendant shall file a written motion and offer of proof at any time before trial or preliminary hearing, unless the defendant demonstrates that the defendant, despite exercise of due diligence, was unable to file the motion before the trial or preliminary hearing. The court may order an in camera hearing to determine whether the proposed evidence is admissible under this statute. If the court finds that the evidence offered meets the requirements of subsections (a) and (c) of this statute, the court shall issue a written order stating what evidence may be introduced and the nature of the questions which shall be permitted. The defendant may then offer evidence under the order of the court.

(c) In the absence of a persuasive showing to the contrary, evidence of the complaining witness' sexual conduct occurring more than one year before the date of the offense charged is presumed to be inadmissible under this section.

(d) In this section, "complaining witness" means the alleged victim of the crime charged, the prosecution of which is subject to this section.

Prostitution

1. Liquor Licenses.

AS 04.11.370(7) authorizes the Alcoholic Beverage Control Board to suspend or revoke a liquor license if the Board finds that the licensed premises are "a resort for ... prostitutes, or pimps."

Issue: Former AS 11.40.420 (repealed in 1978) defined a pimp as "a male person" who "lives upon or receives the earnings of a prostitute" or is involved with prostitution in other specified ways. The present criminal code makes promoting prostitution a crime regardless of the sex of the promoter. AS 11.65.100 et seq. The liquor licensing statute discriminates on the basis of sex by continuing to use the term "pimps."

Recommendation: Replace "pimps" with "promoters of prostitution."

2. Houses Of Prostitution.

AS 09.50.170-.240 authorizes the state or a private citizen to enjoin the operation of houses "used for the purposes of lewdness, assignation, or prostitution or any other immoral act." A court can issue an order of abatement regarding the house. Under the order, all personal property used for the above purposes can be sold and the house shut down for up to a year.

Issue: These are archaic statutes. The most recent appellate case interpreting this provision was in 1928 by the territorial federal court.[51] Since ownership and operation of a house of prostitution is a crime under our present statutes,[52] the attempt of this statute to regulate this activity is duplicative. Insofar as the statute attempts to regulate sexual conduct beyond that made illegal by the criminal code, it is inappropriate. Moreover, other statutes and common law remedies provide adequate means to enjoin any offensive use of real property. See e.g., AS 09.45.230.

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[51] See United States v. Rex Hotel, 8 Alaska 21 (1928).

[52] AS 11.66.130.

Recommendation: Repeal these statutes.

3. Patrons Of Prostitutes.

AS 11.66.100 et seq. are criminal provisions regarding prostitution. These statutes make both prostitution and promoting prostitution crimes. However, the statute specifically precludes prosecution of "patrons" of prostitutes. Therefore, a customer's act of offering a prostitute money is not a criminal act under state law.[53] During the revision of the criminal code in the late 1970s, the tentative draft of these statutes penalized both the prostitute and the patron.[54] Evidently, certain legislators objected to penalizing the prostitute's customer so the present statute specifically excludes the patron from criminal liability.[55]

Issue: The present statute, while written with nondiscriminatory language, impacts women quite disproportionately, since most prostitutes are women while most patrons are men. By penalizing the prostitute but not the patron, a sexually discriminatory impact is manifest in the present statutory scheme.

Recommendation: Two different approaches would remedy this discriminatory impact. The first is to decriminalize prostitution. The second is to criminalize on an equal basis with prostitution the customer's act of offering money to a prostitute.

In recent years, there has been a growing movement in favor of decriminalization of prostitution. The constitutional guarantee of equal rights and protections and the right to privacy present strong arguments in support of

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[53] See Municipality of Anchorage v. Afualo, 657 P.2d 407 (Alaska 1983) (state statute does not preclude municipality from adopting ordinance prohibiting solicitation of a prostitute).

[54] Alaska Criminal Code Revision, Tenative Draft, Part 4, November 1977, pp. 92-99.

[55] See Afualo, 657 P.2d at 408.

decriminalization.[56] Moreover, decriminalization would significantly increase the law enforcement resources available to deal with offenses more harmful to society. Finally, prostitution has been in existence for centuries and the criminalization of the activity does not appear to deter its practice. Decriminalization may be a desirable approach to eliminating the present sexually discriminatory prostitution laws.

Alternatively, if prostitution is not decriminalized, a criminal penalty equivalent to that imposed on the prostitute should be imposed on the patron. The present system with its legalization of one act while criminalization of its exact counterpart, seems, at best, inconsistent.[57] Equalization of the penalties for patrons and prostitutes would mitigate the disparate impact that prostitution laws traditionally have had on women. This equalization of penalties approach has been recently adopted in a number of states, among which are Connecticut, Florida, Michigan, Minnesota, New Hampshire, Oregon and Texas.[58]

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[56] See Alaska Const., Art. 1, §§ 1, 3, 22. See also Plas v. State, 598 P.2d 966, 968 (Alaska 1979) ("In creating criminal offenses it is particularly important that any distinctions as to gender rest upon some logical justifications having a basis in the actual conditions of human life").

[57] See Tentative Draft No. 4, at 97. See also Plas v. State, 598 P.2d at 968.

[58] See Conn, Gen. Stat. Ann. §§ 53a-82, 83 (West 1972); Fla. Stat. Ann. § 796.07 (Supp. 1984); Mich. Comp. Laws Ann. §§ 750.448, .449 (Supp. 1984); Minn. Stat. Ann. § 609.324 (Supp. 1984); N.H. Rev. Stat. Ann. § 645:2 (1974, Supp. 1983); Ore. Rev. Stat. § 167.007 (1983); Tex. Penal Code, Art. 43.02 (Supp. 1984).

Inheritance And Probate

1. Priority Of Child Support Arrearages As Claims Against A Decendent's Estate.

AS 13.16.470 prioritizes creditors' claims against an estate if the assets of the estate are insufficient to pay all sums a deceased person owed. Under the statute, payment of the claims is made in the following order:

(1) costs and expenses of administration;

(2) reasonable funeral expenses;

(3) debts and taxes with preference under federal law;

(4) reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending him;

(5) debts and taxes with preference under other laws of this state; and

(6) all other claims.

While family and homestead allowances are payable from the estate before any of the above claims,[59] any family allowance to which a minor child may be entitled is only for maintenance during the period of estate administration, not to exceed one year. Past due child support payments are not recoverable under the family allowance provision.

Issue: The present statutory scheme does not provide adequate protection to minor children of a former marriage of the decedent whom the decedent was obligated to support. If past child support payments are unpaid at the time of death, they would at best be classified in category number 5,[60] and possibily in category number 6. In either case, child support arrearages receive grossly inadequte protection. A spouse and children living with a decedent at the time of his or her death would receive $37,000 of the

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[59] AS 13.11.125--13.11.140. See Estate of Hutchinson, 577 P.2d 1074 (Alaska 1978). In addition, $10,000 worth of personal property is exempt from creditors' claims.

[60] See AS 09.38.065, which accords child support claims
(Footnote Continued)

estate value in homestead and personal property allowances, plus a one-year family allowance, before any creditors were paid. But a former spouse would have to wait until all these allowances, as well as all higher priority claims, were paid before being entitled to collect past due child support. Clearly, this result is inequitable and impacts far more severely on women, since more often it is the man who is ordered to pay child support.

Recommendation: Add a new statutory allowance for past due child support up to a specified sum to receive priority over all creditors' claims on a basis coequal to the homestead allowance.

2. Oral Wills For Mariners and Soldiers.

AS 13.11.158 provides that "A mariner at sea, or soldier in the military service, may dispose of his wages or other personal property" in an oral will when the oral dispositions made by the will are later written down. All wills by other people must be in writing to be valid.

Issue: Under the common law of England, two exceptions to the written will requirement developed. One exception allowed a person to make an effective oral will when the person is in his last illness in contemplation of imminent death. The other exception was for mariners and soldiers, regardless of their physical health.

Present Alaska law preserves only the mariners and soldiers exception. A distinct class, composed principally of men, is given the ability to make oral wills, even in non-emergency situations. Other men and women, even when they are in situations where death is imminent, must produce a written will in order for its disposition to control.

Recommendation: Repeal AS 13.11.158. No appellate court case is reported under this section, thus indicating minimal use of its provisions. Higher literacy rates and the greater availability of writing tools and paper to soldiers and mariners make this antiquated provision no longer necessary. Alternatively, the full extent of the common law should be restored to allow those persons other than soldiers and mariners who find themselves in fatal

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(Footnote Continued)
a preference to the extent that they are enforceable against otherwise exempt property.

emergencies to orally will property. Problems of proof make repeal of the present statute a more attractive alternative. The identical provision to this statute in California was recently repealed by that state. See former Cal. Probate Code § 54.

3. Economic Rights Upon The Death Of A Spouse.

In 1972, Alaska substantially adopted the Uniform Probate Code. AS 13.11.070-.100, part of that Code, makes provision for a surviving spouse who has been inadequately provided for in the decedent spouse's will. It establishes a procedure in which the surviving spouse is entitled to an elective share in the amount of one-third of the decedent's "augmented estate." The augmented estate includes the probate estate, after reduction of family and homestead allowances and creditors' claims. To this estate, the value of certain lifetime transfers of property by the decedent during marriage to people other than the surviving spouse and the value of all property owned by the surviving spouse and some transfers of property by the surviving spouse are all added.[61] This total constitutes the augmented estate, to which the surviving spouse of a decedent can opt to take one-third, in lieu of the decedent's will provisions.

Expressly excluded from the augmented estate are life insurance proceeds, annuities, and pensions acquired by the decedent for the benefit of people other than the spouse. In addition, some trust arrangements are outside of the augmented estate. Finally, gifts from the decedent to others are excluded as long as the gift was made more than two years before death.

Issue: While the present statute provides some protection to a surviving spouse, it is still possible to effectively disinherit a spouse through the use of transfers excluded from the augmented estate. For example, assume a spouse gives all of his or her property to another individual, and then the spouse dies two years later. In this situation, none of the property given away would be includable in the augmented estate, and the surviving spouse can

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[61] By including the value of property owned by the surviving spouse in the augmented estate, the amount which the surviving spouse will receive from the decedent is effectively diminished.

be effectively disinherited. Historically, it is women more than men who have been disinherited, since men more often than women have controlled the bulk of economic wealth of the marital union. In addition, of the property included in the augmented estate, the surviving spouse is only entitled to one-third. This fraction does not treat marriage as an equal partnership. The contributions of time, labor, emotional support, financial income and other resources which a spouse contributes to a marriage entitle him or her to more than minimum protection when his or her partner has died.[62]

Recommendation: Increase the elective share percentage from one-third to one-half. In addition, undertake a review of the augmentation provisions to develop revisions to the determination of the augmented estate to ensure adequate protection of the surviving spouse.

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[62]For a full discussion on the potential abuse of the elective share device, see S. Kurtz, "The Augmented Estate Concept Under the Uniform Probate Code: In search of an equitable elective share," 62 Iowa L.Rev. 981 (April 1977).

Partnerships

1. Determination Of Partnership.

AS 32.05.020 sets out rules for determining when a person is considered to have entered into a partnership with other persons. Subsection (4) provides that:

> The receipt by a person of a share of the profits of a business is prima facie evidence that he is a partner in the business, but no such inference shall be drawn if such profits were received in payment
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> . . .
>
> (C) as an annuity to a widow or representative of a deceased partner.

Issue: "Widow" is defined as "a woman whose husband is dead, and who is not remarried."[63] The corresponding term for a male surviving spouse is "widower," but is not addressed by the statute. The statute inappropriately presumes men, but not women, will enter into partnerships.

Recommendation: Replace "widow" with "surviving spouse." In addition, the use of the personal pronoun "he" should be eliminated.

2. Partner's Interest In Specific Partnership Property.

AS 32.05.200 describes the nature of a partner's interest in specific property owned by the partnership. Basically, the partner has no rights to specific property owned by the partnership. The partner's rights are in the partnership itself, and defined by statute as an interest in the profits and surplus of the partnership.

In describing the partner's lack of interest in specific partnership property, AS 32.05.200(b)(5) provides that "a partner's right in specific partnership property is not

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[63] Black's Law Dictionary, at 1433 (5th Ed. 1979).

subject to dower, curtesy, or allowances to widows, heirs or next-of-kin."

Issue: The terms "dower" and "curtesy" are antiquated legal doctrines which provided for disinherited spouses. The doctrine of dower accorded a surviving female spouse the right to one-third of all lands owned by the husband for the rest of the wife's life. Curtesy accorded a similar right to a surviving husband, provided that the couple had children born to them which might inherit the estate. No similar requirement conditioned the woman's right to dower. The statute refers only to allowances to widows, a sex-differentiated term.

Dower and curtesy have been abolished in Alaska. Sex-neutral terms have been adopted to establish the rights of surviving spouses in probate law.[64]

Recommendation: Subsection (5) should be amended to read as follows:

> A partner's right in specific partnership property is not subject to statutory allowances or any other claims of surviving spouses, heirs, or next-of-kin.

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[64]Two statutes which remained on the books and which referred to dower were just recently repealed in 1984 -- former AS 09.45.480(a)(1) and .720.

Public Employee Retirement Benefits

A number of present statutes regarding state-administered public employee retirement systems which have the potential for sex discrimination would be amended by legislation recently proposed by the Governor at the request of the Alaska Women's Commission.[65]

Issue: Under present statutes, only an employee or other recipient of pension benefits is able to select survivor benefits for their spouse. When the employee selects this benefit option, the employee has sole authority to change the joint and survivor option at any time before retirement without notice or consent of the spouse.

Under the proposed legislation, an employee's spouse, if that employee is married, is automatically entitled to these survivor benefits unless the spouse has waived the entitlement in writing. Since in households of married people where only one spouse works, it is more commonly the male that works, this proposed legislation would ensure that non-wage earning wife would be the recipient of survivor and death benefits in the event of the husband's death.[66] Apart from remedying the potential for sex discrimination under the present statutes, the proposed legislation is a commendable step in that it extends for public employees the

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[65] See HB 237.

[66] Potential for inequity under the present statutes is illustrated by a recent Montana case, Sowell v. Teachers' Retirement System of the State of Montana, 11 Family Law Reporter 1134 (Montana, December 27, 1984). Despite evidence indicating that a deceased husband had intended to name his second wife the beneficiary of his Teachers' Retirement System benefits, the first wife was held to be entitled to the benefits because she was the named beneficiary and there was no affirmative step taken by the husband to change the beneficiary. Although the husband had told the second wife that she would receive the benefits, and the husband had returned periodic forms sent by the plan indicating that his "spouse" was the beneficiary, he never changed the initial designation of his former wife. Since the statutes specifically provided that payment would be made to the named beneficiary, the court held that the first wife was entitled to the proceeds from the retirement account.

equitable distribution theory beyond the termination of marriage proceedings.[67] Specifically, the proposed legislation would allow survivor and death benefits to be assignable under divorce and dissolution decrees.

The proposed legislation would also amend the definition of the surviving spouse for purposes of Judicial Retirement benefits. Under current law, a spouse must have been married to the justice or judge for at least two years immediately preceding the death of the justice or judge to be eligible for survivor benefits. AS 22.25.030(b). The proposal would shorten this pre-existing marriage requirement to one year. The one-year requirement is presently used under the Public Employees' Retirement System.[68] No similar requirement is imposed under the Teachers' Retirement System.[69]

Recommendations: The one-year marriage requirement does not apply to members of the Public Employees' Retirement System when the death is an accidental or occupational death.[70] The proposed legislation does not provide for this exception for members of the Judicial Retirement System. Legislation should be proposed which would eliminate the one-year requirement if a member of the Judicial Retirement System dies from accidental or occupational causes, to make this system consistent with the Public Employees' Retirement System.

The proposed legislation would not amend a provision presently found in the Judicial Retirement System statute which provides for the termination of survivor benefits in the event that the surviving spouse remarries. Survivor benefits under present law do not cease if the surviving spouse remarries under either the Public Employees' Retirement System or the Teachers' Retirement System. Since the vast majority of judges are male, this forfeiture on remarriage provision in the Judicial Retirement System has a disparate impact on females. Thus, for example, if a woman were married to a judge for 40 years, the judge retired and

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[67] Among the statutes that would be effected by the proposed legislation are AS 14.25.167 (teachers' retirement benefits), AS 26.05.224 (Alaska National Guard pension benefits), and AS 39.35.370, .450, .490 (public employees' retirement benefits).

[68] AS 39.35.680(37).

[69] See AS 14.25.164.

[70] See AS 39.35.680(67).

then died the year after retirement, and the widow remarried a year later, the widow would forfeit all benefits she would otherwise be entitled to under the system because of the remarriage -- including her right to withdraw the original amount contributed which had not yet been paid back in benefits. The statutes should be changed so that a surviving spouse is eligible for benefits regardless of whether the spouse remarries after the death of the judge.

Employment Statutes

1. Wage Discrimination On The Basis Of Sex.

AS 18.80.220 sets out a number of prohibited employment practices. Subsection (5) provides that it is unlawful for "an employer to discriminate in the payment of wages as between the sexes, or to employ a female in an occupation in this state at a salary or wage rate less than that paid to a male employee for work of comparable character" ... .

Issue: This law precludes an employer from hiring a female for less than the comparable wage for a male, but does not accord the reciprocal protection to males. Although traditionally women have received, and continue to receive, lower wages than men, the statute need not rely on gender-based terminology and should assure equality to both sexes.

Recommendation: Redraft the clause using genderneutral terms to provide that it is unlawful "for an employer to discriminate in the payment of wages as between the sexes, or to employ a person in an occupation in this state at a salary or wage rate less than that paid to a person of the other sex for work of comparable character" ... .[71]

2. Governor's Committee On Employment Of The Handicapped.

AS 23.15.220 et seq. creates a Governor's Committee on Employment of the Handicapped. AS 23.15.230 specifies the composition of the 12-member committee. It provides, in part, "The committee shall be composed of state leaders of industry, business, agriculture, labor, veterans, women, religious, educational, civic, fraternal, welfare, scientific, military, medical and other professions, or as many of these and like categories as may be feasibly represented."

Issue: The law provides that "leaders of women" be among the committee members. There is no like requirement that "leaders of men" be considered.

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[71]The interpretation of the existing statutory language is presently at issue in litigation before the Alaska Human Rights Commission. Therefore, revision of the statute at this times requires careful evaluation.

Recommendation: The continuing need for women's interests to be represented on state committees warrants this statutory assurance of such participation. Retention of the statute in its present form is appropriate.

"The Head Of A Family" Designation

Several statutes employ the term "the head of a family" to define a benefit recipient. The term has a potential for sex discrimination as it presumes that all households have one, and only one, person in charge. While this is the case in one-adult households, it is clearly inappropriate for the state to apply this terminology to two-person households. Even if only one adult in a two-adult household is the primary wage earner, the implication that the adult is, as a result of this economic contribution, the head of a family, requires correction.

1. Hunting, Trapping And Sport Fishing Licenses.

AS 16.05.340(a)(6) states that a resident hunting, trapping, and sport fishing license is 25 cents for an applicant "who is the head of a family or a dependent member of that family, or who is solely self-supporting," and who is obtaining or has obtained welfare benefits during the preceding six months or has an annual family gross income of less than $5,600.

Recommendation: Replace the phrase "who is the head of a family or a dependent member of that family, or solely self-supporting" with "who is a member of a family or a solely self-supporting individual who ..." meets the financial need requirements. In addition, the subsection might conclude with a limitation which allows only one such reduced price license to be issued per eligible family.

2. Property Tax Exemptions.

a. Less Than $500. AS 29.53.020(a)(2) exempts the "household furniture of the head of a family or a householder not exceeding $500 in value" from general municipal property taxes.

Recommendation: Delete "the head of a family or" from the statute.

b. More Than $500. AS 29.53.025(b)(2)(A), effective January 1, 1985, allows a municipality the option of exempting "the household furniture over $500 in value and the effects of the head of a family or a householder."

Recommendation: Delete "the head of a family or" from the statute.

3. Exemptions From Distraint And Sale.

AS 43.20.270 authorizes the Department of Revenue to collect unpaid back taxes by distraint and sale. Subsection (b) exempts certain specified property of the taxpayer from this forced sale "if it belongs to the head of a family... ."

Recommendation: Replace "if it belongs to the head of a family" with "of the household."

Needy Persons

AS 47.25.230 provides that "[e]very needy person shall be supported while living, and upon dying, shall be given a decent burial by the spouse, children, father, mother, grandfather, grandmother, grandchildren, brothers or sisters of the needy person, if they, or any of them, have the ability to do so, in the order named."

Issue: The problem with this provision is in the last clause -- "in the order named." The statute makes the father of a needy person liable for support and burial expenses before the mother, the grandfather prior to the grandmother, and the brothers before the sisters. The sex discrimination is self-evident.

Recommendation: Revise the sentence by replacing "father, mother, grandfather, grandmother..." with "parents, grandparents, grandchildren or siblings... ."

Veterans' Benefits

A number of statutes in Alaska give veterans special benefits unavailable to non-veterans. These benefits range from lower interest rates on state assisted residential property loans to public employment hiring preferences. Other state statutes accord special benefits only to disabled veterans.

Veterans' benefits can serve several legitimate state interests. The Veterans' Readjustment Act of 1944, which gave veterans preferences in federal civil service employment, explained the purpose of that particular preference as one to provide an "aid for the readjustment to civilian life," "... readjustment ... opportunities to those ... whose ambitions have been interrupted or impeded by reason of active service ...;" and aid in "attaining the ... status which they might normally have aspired to and obtained had they not served their country ... ."

While the civilian readjustment purpose of veterans' benefits as a public policy is supported by the Alaska Women's Commission, present Alaska law provides veterans with benefits that extend far beyond that purpose. Instead of being an aid to enable readjustment to civilian life on equal footing to those who have not served in the military, many veterans' benefits in this state confer substantial lifetime rewards on individuals for as little as 90 days of active duty service in the military.[72]

Veterans constitute a class that is overwhelmingly male. Presently, women veterans constitute about four percent of the total veteran population. "A slow but steady increase in the female veteran population is projected for the remainder of this century, provided that women's share of the active military remains at or above its current level of around nine percent."[73] By according benefits to veterans that are unavailable to non-veterans, women as a class are unquestionably placed on a lower footing than men as a class. As a result, legislation which accords veterans

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[72]As a class, veterans living in Alaska numbered approximately 50,000 in 1980, or approximately one-eighth of the total state resident population at that time. U.S. Bureau of the Census, Statistical Abstract of the United States: 1984 (104th Ed.) pp. 12, 358.

[73]United States Veterans Administration, Annual Report, 1983, p. 4. See also United States Veterans Administration, Veterans in the United States: A Statistical Portrait from the 1980 Census (July 1984).

benefits or preferences should be carefully assessed to ensure that the benefits to veterans that result are warranted in light of the disproportionate impact on women that these benefits produce. The primary goal of veterans' preferences should be to reintegrate veterans into the workforce and to assure that they are not in a lesser position due to their military service. In the last few years, with the military increasingly becoming a peace-time career option and an attractive means to acquire education, job training skills and potential long-term retirement benefits, the need for reintegration assistance should be diminishing. But instead we have recently witnessed a continually burgeoning menu of state benefits available solely to veterans. To offer lifetime rewards solely to those individuals who have served their country in the armed forces works to the detriment of women as a class. The many individuals who have served their government or society by other means, women and men alike, are not conferred similar benefits. Although certainly the relatively small class of female veterans benefit from these programs on a level commensurate to male veterans, the disproportionate number of men in the class of veterans can hardly be disputed. The fact that some women benefit from these veterans' benefits programs does not mean that these programs should be exempt from review for sexually discriminatory impact.

A separate issue is state benefits extended only to disabled veterans. A relatively small class and certainly one with far more compelling justification for assistance, a more equitable approach to these types of benefits may be to extend their applicability to other disabled individuals. In that way, the rights of all disabled persons -- men and women, veteran and non-veteran alike -- will be ensured protection.

1. Civil Service Employment.

AS 39.25.150(19) creates a preference right for veterans and disabled veterans for state civil service employment.

Issue: Veterans are given a one-time five-point preference that they are eligible to use the first time they apply for a state civil service position, regardless of how many years following completion of military service the state job is sought. Disabled veterans who, for purposes of this statute, are defined as veterans entitled to compensation by the Veterans Administration or discharged from active duty in the service because of a service-connected disability, receive a 10-point one-time preference. For

purposes of this statute, a veteran is defined as being an honorably discharged service person with over 180 days of active service during specified time periods of 1917 through 1919, 1940 through 1947, and 1950 through late 1975.

Recommendation: In its present form, this statute provides a one-time lifetime benefit to veterans who were drafted and enlisted in earlier wars. These veterans often served at great financial expense, interrupting their careers and education to do so. Despite the disproportionate impact on women of this benefit, its retention is recommended in light of the restriction of the one-time-only use of the preference.

In regard to disabled veterans, the definition of disabled veterans as persons who are entitled to compensation by the Veterans Administration may be too broad by including some individuals who are not occupationally disabled. The definition of a disabled veteran should be limited to persons who have a service-connected disability for which they are receiving compensation from the Veterans Administration.

2. Retirement Credit For Prior Military Service.

AS 39.35.340, AS 14.25.060 and AS 14.25.100 allow a former active member of the armed forces of the United States who was not dishonorably discharged to receive credit for up to five years of that service in the Public Employees' or Teachers' Retirement systems. These retirement benefits are in addition to any military pension to which the former service person might be entitled from the United States government.

Issue: Although there are other statutory provisions which allow credit for other types of prior government service, the other credits available all have restrictions designed to avoid an inequitable distribution of retirement funds. For example, former territorial employees are entitled to credited service, but any retirement benefits resulting from this credit are reduced by the amount of pension benefits the employee receives from the United States for that service.[74] A similar offset of pension benefits is required for former Bureau of Indian Affairs employees who seek credit for this former service.[75]

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[74] AS 39.35.360(a).

[75] See AS 14.25.107, AS 39.35.360(i).

Recommendation: The five years' credit for military service should be retained, despite the fact that more men than women will benefit from this credit. This credit provision in its present form attempts to compensate those individuals who spent several years in the military for the loss of retirement benefits that would have accrued had the individual entered public service employment instead of serving in the military.

The one recommended change to this statute is to require an offset of any pension obtainable from the federal government for the same military service.[76] If an individual has served in the military for the 20 years required to obtain the military pension benefits, he or she should not be able to receive Public Employees' or Teachers' Retirement benefits for that same period of military service without an offset.

3. Veterans' Preference In State Land Sales.

a. Purchase. AS 38.05.067 provides veterans who, for purposes of this statute, are defined as persons with 90 days or more of active service in the U.S. armed forces with an honorable discharge, an opportunity to purchase unoccupied residential land before the land is offered for sale to the general public. The director of the division of lands in the Department of Natural Resources is required to initially offer this type of land in a sale "at which only veterans may buy." AS 38.05.067(a).

Until 1981, the statute limited the definition of veterans to persons who actively served during specified times of war. The 1981 amendment expanded the class to include all veterans who had 90 days or more honorably discharged service, regardless of when this service took place.

Issue: There is some question whether this statutory preference could survive a state constitutional challenge. The Alaska Constitution provides that "No disposal or leases of state lands, or interests therein, shall be made without

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[76] Such a change would be prospective only, as the State Constitution prohibits any retroactive reduction in benefits. Alaska Const., Art. XII, § 7.

prior public notice and other safeguards of the public interest as may be prescribed by law."[77] By allowing an offer to a restricted class before an offer to the general public, the public notice and interest is adversely impacted. In addition, a challenge to the statute on state equal protection grounds could have merit.

The closed land sales definitely adversely impact women, because a disproportionate number of veterans are male. The policy of holding closed land sales ultimately withholds an advantage or privilege from a disproportionate number of state residents because of their sex.[78]

Recommendation: To allow all Alaskans, women and men alike, to have an equal opportunity to purchase state residential lands, AS 38.05.067 should be repealed.[79]

b. Discount. AS 38.05.940 creates a veterans' land discount program.

Issue: Under this statute, veteran purchasers of specified state lands are entitled to a one-time 25 percent discount on the purchase price of the land.[80] The discount cannot be applied to residential land purchases under the veterans' closed sale provision discussed above, nor toward land purchased for commercial or industrial use. For other residential land purchases, the program affords veterans a substantial benefit unavailable to non-veterans.

Recommendation: There does not appear to be sufficient justification for awarding veterans such a substantial benefit for this noncommercial state land. The provision cannot be construed as one which aids in the reintegration of veterans into civilian life. It seems unfair to reward only one select group of citizens for its contribution to society. Other people, men and women alike, may have made

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[77] Alaska Const., Art. VIII, § 10.

[78] Such discrimination is expressly prohibited by AS 18.80.255.

[79] Unfortunately, prior efforts to repeal this provision have been unsuccessful. See Alaska Commission on the Status of Women. Resolution 79-01.

[80] A veteran is defined in this statute as an individual with at least two years' active duty service, among other requirements.

contributions as significant, yet are not rewarded by a 25 percent discount when purchasing state land. This program should be eliminated.

4. Residential Loans And Housing.

AS 18.56.098(g)(2) creates a one percentage point lower interest rate to eligible veterans for the first $90,000 of Alaska Housing Finance Corporation loans. The benefit is a lifetime benefit continually available to any veteran who served for at least 90 days in the armed forces at any time since 1917. In addition, people who have served at least five years in the Alaska National Guard are eligible for this percentage point reduction.[81]

On a related note, AS 18.55.330 accords veterans and their spouses or surviving spouses a preference in 50 percent of the dwelling units in moderate cost or rental housing projects constructed by the Alaska State Housing Authority. The statute requires the Authority to initially offer only to veterans 50 percent of the dwelling units in a housing project for sale or rent. This statute was originally enacted in 1949. Until 1968, the term "veteran" was defined as a person who served in World War II. In 1968, the statutory definition was expanded to encompass an individual who served in the military in either WWII, the Korean War, or the Vietnam War[82].

Issue: Both these statutes in their present form extend far beyond a reintegration purpose. Clearly each accords a lifetime benefit to a former military employee. An individual who served in the military for several years as a young adult should not, solely because of that service, receive a lower interest rate on residential housing loans for the rest of his or her life. Nor should that same young adult have a far better chance of obtaining state-subsidized housing simply because of that service. The adverse impact on women caused by the award of these benefits is of a high magnitude.

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[81] See AS 18.56.101.

[82] See AS 18.55.470(5).

Recommendation: Individuals who have just recently left the service should be entitled to some housing assistance in order to aid their reintegration to civilian life. The one percentage point lower interest rate should be limited to a one-time only use, expressly made non-assumable, and required to be exercised within 10 years from termination with a military. A similar restriction should be imposed on the preference in ASHA housing. These changes would accord veterans considerable assistance when first out of the service, provide some reward for the service, and yet prevent the lifetime availability of these benefits to the detriment of other citizens.

5. Other Loans Available To Veterans.

AS 26.15.040 provides for three different loans to be made available to qualified veterans. Veterans in this statute are defined as persons who served in the military from 1940 through 1975, or in a combat zone during any period of armed conflict, and who received a discharge other dishonorable.[83]

The statute authorizes personal loans of up to $10,000, multiple dwelling loans of up to $110,000, and business loans, provided the applicant has at least three years of general business experience, of up to $125,000. On all three types of loans, the rate of interest may not exceed 9½ percent annually.

Issue: This statute in its present form can only be characterized as designed to reward military service. Because of the fact of prior military service (now limited in the case of post-1975 service to that incurred in a combat zone - which prevents nearly all women who have recently served in the military from receiving these loans), an individual gets a good rate of interest on a considerable sum of money. The three years in general business experience requirement before the business loan may be made contemplates a reintegration of the veteran into civilian

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[83]AS 26.15.130. Dependents may also be eligible, as well as veterans who served between 1917-1918, and persons who served at least six years in the Alaska Air or Army National Guard or Alaska Militia with a discharge other than dishonorable.

life before eligibility for that benefit is ever established. Nor does the statute appear to otherwise limit the time in which these loans are available, as long as the total borrowed at any one time does not exceed $125,000. Finally, all three types of loans are assumable by others at the 9½ percent interest rate, which accords veterans that obtain them the potential for considerable financial leverage.

Recommendation: These benefits should be severely restricted. Personal loans of up to $10,000 should be retained at the 9½ percent rate, but should be available to a veteran only once per lifetime and only if sought within five years of the termination of service. These restrictions would help ensure that the loan was being used to aid reintegration into civilian life -- not provide a financial benefit unavailable to non-veterans. The business loan and multidwelling unit loan provisions should be deleted. These loans give veterans a lifetime substantial edge in the business world which appears unwarranted.

6. Burial Benefits.

AS 26.10.080, newly enacted in 1982, accords the surviving spouse of a veteran a death gratuity of $750. If the veteran has no surviving spouse, the gratuity is paid to the decedent veteran's estate.

Issue: This statute defines the term "veteran" very broadly as any person who served in the U.S. military as well as the Alaska Air or Army National Guard and related groups, as long as that person was a resident of Alaska during one of various specified time periods. No time limit of service is imposed. However, the veteran had to receive at least a general discharge under honorable conditions. AS 26.10.080(c).

Recommendation: It would be nice if the state provided everyone with a $750 payment at the death of one's spouse. But to limit this payment solely to a surviving spouse whose former spouse happened to have served in the military for however brief a period at some point in his or her life does not appear to advance any legitimate state interest. Under this statute, a spouse of an individual who was discharged after a few weeks of military service would evidently be entitled to a $750 payment when the individual died. It does not seem a very rational or appropriate use of state funds. The repeal of AS 26.10.080 is recommended.

7. Disabled Veterans' Benefits.

AS 29.53.020(e) exempts the residence of a disabled veteran from property taxes. AS 29.73.060 and .062 provide for reimbursement payments to disabled veterans who rent rather than own their principal residence.

These provisions define a disabled veteran as a person who incurred a disability while in the line of duty in military service, and whose disability is rated as 50 percent or more.

Issue: These provisions are all recent legislation enacted in 1984. They are all commendable legislation seeking to relieve one class of disabled persons from the burden of property taxes. The problem with these statutes is their underinclusiveness. All other individuals disabled to the same degree should receive this exemption or exemption equivalency.

Recommendation: The statute should be amended to expand the benefit provided to encompass all disabled persons.

8. Military Benefits.

AS 28.15.021(3) exempts a member of the armed forces from the requirement of obtaining an Alaska drivers' license if the person has a valid drivers' license from another state where permanent residence is maintained.

Issue: Other non-residents, including the spouse and dependents of the service person, are required to obtain Alaska driver's licenses within 90 days of their entry into the state.

Recommendation: This license exemption for military personnel should be extended to the spouse and dependents of the service person.

The motto of the federal Veterans Administration is "to care for him who shall have borne the battle and for his widow, and his orphan." Certainly this motto advances a most commendable goal to be implemented on the state level. But when specific benefits extend far beyond "caring" for

the veteran and, instead, appear solely to confer substantial rewards on the class of veterans, a re-examination of each benefit program appears highly warranted to ensure that it is in the best interests of society as a whole.

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